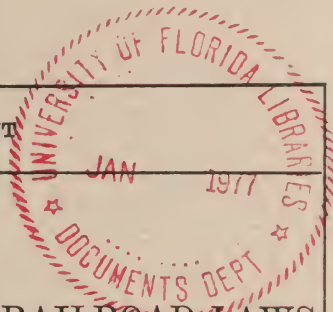


94-2
94. IN 8/4: R 3/74
94th Congress }
2d Session }

COMMITTEE PRINT



COMPILATION OF CERTAIN RAILROAD LAWS
WITHIN THE JURISDICTION OF THE
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE

INCLUDING

REGIONAL RAIL REORGANIZATION ACT OF 1973
RAILROAD REVITALIZATION AND REGULATORY REFORM
ACT OF 1976

PART I OF THE INTERSTATE COMMERCE ACT

RAIL PASSENGER SERVICE ACT

FEDERAL RAILROAD SAFETY ACT OF 1970

RAILWAY LABOR ACT

RAILROAD RETIREMENT ACT

RAILROAD UNEMPLOYMENT INSURANCE ACT

RELATED MATERIALS

PREPARED FOR THE USE OF THE

HOUSE COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE



DECEMBER 1976

Printed for the use of the
House Committee on Interstate and Foreign Commerce



Digitized by the Internet Archive
in 2013

<http://archive.org/details/compilacer00unit>

COMPILATION OF CERTAIN RAILROAD LAWS
WITHIN THE JURISDICTION OF THE
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE

INCLUDING

REGIONAL RAIL REORGANIZATION ACT OF 1973
RAILROAD REVITALIZATION AND REGULATORY REFORM
ACT OF 1976

PART I OF THE INTERSTATE COMMERCE ACT

RAIL PASSENGER SERVICE ACT

FEDERAL RAILROAD SAFETY ACT OF 1970

RAILWAY LABOR ACT

RAILROAD RETIREMENT ACT

RAILROAD UNEMPLOYMENT INSURANCE ACT

RELATED MATERIALS

PREPARED FOR THE USE OF THE
HOUSE COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE



DECEMBER 1976

Printed for the use of the
House Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE

79-701 O

WASHINGTON : 1977

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

JOHN E. MOSS, California	SAMUEL L. DEVINE, Ohio
JOHN D. DINGELL, Michigan	JAMES T. BROYHILL, North Carolina
PAUL G. ROGERS, Florida	TIM LEE CARTER, Kentucky
LIONEL VAN DEERLIN, California	CLARENCE J. BROWN, Ohio
FRED B. ROONEY, Pennsylvania	JOE SKUBITZ, Kansas
JOHN M. MURPHY, New York	JAMES M. COLLINS, Texas
DAVID E. SATTERFIELD III, Virginia	LOUIS FREY, Jr., Florida
BROCK ADAMS, Washington	JOHN Y. MCCOLLISTER, Nebraska
W. S. (BILL) STUCKEY, Jr., Georgia	NORMAN F. LENT, New York
BOB ECKHARDT, Texas	H. JOHN HEINZ III, Pennsylvania
RICHARDSON PREYER, North Carolina	EDWARD R. MADIGAN, Illinois
JAMES W. SYMINGTON, Missouri	CARLOS J. MOORHEAD, California
CHARLES J. CARNEY, Ohio	MATTHEW J. RINALDO, New Jersey
RALPH H. METCALFE, Illinois	W. HENSON MOORE, Louisiana
GOODLOE E. BYRON, Maryland	
JAMES H. SCHEUER, New York	
RICHARD L. OTTINGER, New York	
HENRY A. WAXMAN, California	
ROBERT (BOB) KRUEGER, Texas	
TIMOTHY E. WIRTH, Colorado	
PHILIP R. SHARP, Indiana	
WILLIAM M. BRODHEAD, Michigan	
JAMES J. FLORIO, New Jersey	
ANTHONY TOBY MOFFETT, Connecticut	
JIM SANTINI, Nevada	
ANDREW MAGUIRE, New Jersey	
MARTIN A. RUSSO, Illinois	

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

CHARLES B. CURTIS	BRIAN R. MOIR
LEE S. HYDE	KAREN NELSON
ELIZABETH HARRISON	MARGOT DINNEEN
JEFFREY H. SCHWARTZ	ROSS D. AIN
WILLIAM P. ADAMS	CHRISTOPHER E. DUNNE
ROBERT R. NORDHAUS	WILLIAM M. KITZMILLER

Minority Professional Staff

LEWIS E. BERRY	J. PAUL MOLLOY
H. THOMAS GREENE	RONALD D. COLEMAN
JAN BENES VLCEK	ROBERT STANLEY LAMB

CONTENTS

	Page
Regional Rail Reorganization Act of 1973.....	3
Railroad Revitalization and Regulatory Reform Act of 1976.....	93
Part I of the Interstate Commerce Act.....	229
Rail Passenger Service Act.....	367
Federal Railroad Safety Act of 1970.....	399
Railway Labor Act.....	411
Railroad Retirement Act.....	437
Railroad Unemployment Insurance Act.....	493
Related materials:	
Excerpts from the United States Code showing:	
Safety Appliance Acts.....	529
Ash Pan Act.....	535
Locomotive Inspection Act.....	535
Block signal systems.....	541
Inspection and testing of railroad cars and appliances.....	541
Accident Reports Act.....	541
Hours of Service Act.....	545
Hazardous Materials Transportation Act.....	551
Independent Safety Board Act of 1974.....	563



REGIONAL RAIL REORGANIZATION ACT OF 1973

REGIONAL RAIL REORGANIZATION ACT OF 1973

(as amended through 1976)

AN ACT To authorize and direct the maintenance of adequate and efficient rail services in the Midwest and Northeast region of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Regional Rail Reorganization Act of 1973".

TABLE OF CONTENTS

TITLE I—GENERAL PROVISIONS

- Sec. 101. Declaration of policy.
- Sec. 102. Definitions.

TITLE II—UNITED STATES RAILWAY ASSOCIATION

- Sec. 201. Formation and structure.
- Sec. 202. General powers and duties of the Association.
- Sec. 203. Access to information.
- Sec. 204. Report.
- Sec. 205. Rail Services Planning Office.
- Sec. 206. Final system plan.
- Sec. 207. Adoption of final system plan.
- Sec. 208. Review by Congress.
- Sec. 209. Judicial review.
- Sec. 210. Obligations of the Association.
- Sec. 211. Loans.
- Sec. 212. Records, audit, and examination.
- Sec. 213. Emergency assistance pending implementation.
- Sec. 214. Authorization for appropriations.
- Sec. 215. Maintenance and improvement of plant.
- Sec. 216. Purchase of debentures and series A preferred stock.

TITLE III—CONSOLIDATED RAIL CORPORATION

- Sec. 301. Formation and structure.
- Sec. 302. Powers and duties of the Corporation.
- Sec. 303. Valuation and conveyances of rail properties.
- Sec. 304. Termination and continuation of rail services.
- Sec. 305. Continuing reorganization; supplemental transactions.
- Sec. 306. Certificates of value.
- Sec. 307. Protection of Federal funds.

TITLE IV—LOCAL RAIL SERVICES

- Sec. 401. Findings and purposes.
- Sec. 402. Rail service continuation assistance.
- Sec. 403. Acquisition and modernization loans.

TITLE V—EMPLOYEE PROTECTION

- Sec. 501. Definitions.
- Sec. 502. Employment offers.
- Sec. 503. Assignment of work.
- Sec. 504. Collective-bargaining agreements.
- Sec. 505. Employee protection.
- Sec. 506. Contracting out.
- Sec. 507. Arbitration.
- Sec. 508. Duties of acquiring and selling railroads.
- Sec. 509. Payment of benefits.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Relationship to other laws.
- Sec. 602. Annual evaluation by the Secretary.
- Sec. 603. Freight rates for recyclables.
- Sec. 604. Separability.
- Sec. 605. Duty of transferee.

TITLE I—GENERAL PROVISIONS

DECLARATION OF POLICY

SEC. 101. (a) FINDINGS.—The Congress finds and declares that—

(1) Essential rail service in the midwest and northeast region of the United States is provided by railroads which are today insolvent and attempting to undergo reorganization under the Bankruptcy Act.

(2) This essential rail service is threatened with cessation or significant curtailment because of the inability of the trustees of such railroads to formulate acceptable plans of reorganization. This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

(3) The public convenience and necessity require adequate and efficient rail service in this region and throughout the Nation to meet the needs of commerce, the national defense, the environment, and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers.

(4) Continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system.

(5) Rail service and rail transportation offer economic and environmental advantages with respect to land use, air pollution, noise levels, energy efficiency and conservation, resource allocation, safety, and cost per ton-mile of movement to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest.

(6) These needs cannot be met without substantial action by the Federal Government.

(b) PURPOSES.—It is therefore declared to be the purpose of Congress in this Act to provide for—

(1) the identification of a rail service system in the midwest and northeast region which is adequate to meet the needs and service requirements of this region and of the national rail transportation system;

(2) the reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region;

(3) the establishment of the United States Railway Association, with enumerated powers and responsibilities;

(4) the establishment of the Consolidated Rail Corporation, with enumerated powers and responsibilities;

(5) assistance to States and local and regional transportation authorities for continuation of local rail services threatened with cessation; and

(6) necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

DEFINITIONS

SEC. 102. As used in this Act, unless the context otherwise requires—

(1) "Association" means the United States Railway Association, established under section 201 of this Act;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation required to be established under section 301 of this Act or its successor by merger, consolidation or other form of succession carried out under applicable law for the purpose of changing the State of its incorporation;

(4) "effective date of the final system plan" means the date on which the final system plan or any revised final system plan is deemed approved by Congress, in accordance with section 208 of this Act;

(5) "employees stock ownership plan" means a technique of corporate finance that uses a stock bonus trust or a company stock money purchase pension trust which qualifies under section 401 (a) of the Internal Revenue Code of 1954 (26 U.S.C. 401(a)) in connection with the financing of corporate improvements, transfers in the ownership of corporate assets, and other capital requirements of a corporation and which is designed to build beneficial equity ownership of shares in the employer corporation into its employees substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees.

(6) "final system plan" means the plan of reorganization for the restructure, rehabilitation, and modernization of railroads in reorganization prepared pursuant to section 206 and approved pursuant to section 208 of this Act;

(7) "Finance Committee" means the Finance Committee of the Board of Directors of the Association established under section 201(i) of this Act;

(8) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

(9) "local or regional transportation authority" includes a political subdivision of a State.

(10) "Office" means the Rail Services Planning Office established under section 205 of this Act;

(11) "profitable railroad" means a railroad which is not a railroad in reorganization. The term does not include the Corporation, the National Railroad Passenger Corporation, or a railroad leased, operated, or controlled by a railroad in reorganization in the region;

(12) "rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad (or a person owned, leased, or otherwise controlled by a railroad) which are used or useful in rail transportation service; except that the term, when used in conjunction with the phrase "railroads leased, operated, or controlled by a railroad in reorganization", shall not include assets or rights owned, leased, or otherwise controlled by a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization;

(13) "railroad" means a common carrier by railroad as defined in section 1(3) of part I of the Interstate Commerce Act (49 U.S.C. 1(3)). The term includes the Corporation and the National Railroad Passenger Corporation;

(14) "railroad in reorganization" means a railroad which is subject to a bankruptcy proceeding and which has not been determined by a court to be reorganizable or not subject to reorganization pursuant to this Act as prescribed in section 207(b) of this Act. A "bankruptcy proceeding" includes a proceeding pursuant to section 77 of the Bankruptcy Act (11 U.S.C. 205) and an equity receivership or equivalent proceeding;

(15) "Region" means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order);

(16) "Secretary" means the Secretary of Transportation or the person at the time performing the duties of the Office of the Secretary of Transportation in accordance with law, or, in his absence, the Deputy Secretary of Transportation;

(17) "State" means any State or the District of Columbia;

(18) "subsidiary" means any corporation 100 percent of whose total combined voting shares are, directly or indirectly, owned or controlled by the Corporation; and

(19) "supplemental transaction" means any transaction set forth in a proposal under section 305 of this Act, within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act, under which the Corporation or a subsidiary thereof would (A) acquire rail properties not designated for transfer or conveyance to it under the final system plan, (B) convey rail properties to a profitable railroad, a subsidiary of the Corporation or, other than as designated in the final system plan, to the National Railroad Passenger Corporation or to a State or a local or regional transportation authority, or to any other responsible person for use in providing rail service, or (C) enter into contractual or other arrangements with any person for the joint use of rail properties or the coordination or separation of rail operations or services.

TITLE II—UNITED STATES RAILWAY ASSOCIATION

FORMATION AND STRUCTURE

SEC. 201. (a) **ESTABLISHMENT.**—There is established in accordance with the provisions of this section, an incorporated nonprofit association to be known as the United States Railway Association.

(b) **ADMINISTRATION.**—The Association shall be directed by a Board of Directors. The individuals designated, pursuant to subsection (d) (2) of this section, as the Government members of such Board shall be deemed the incorporators of the Association and shall take whatever steps are necessary to establish the Association, including filing of articles of incorporation, and serving as an acting Board of Directors for a period of not more than 45 days after the date of incorporation of the Association.

(c) **STATUS.**—The Association shall be a government corporation of the District of Columbia subject, to the extent not inconsistent with this title, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-1001 et seq.). Except as otherwise provided, employees of the Association shall not be deemed employees of the Federal Government. The Association shall have succession until dissolved by Act of Congress, shall maintain its principal office in the District of Columbia, and shall be deemed to be a resident of the District of Columbia with respect to venue in any legal proceeding.

(d) **BOARD OF DIRECTORS.**—The Board of Directors of the Association shall consist of 11 individuals, as follows:

(1) the Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) three Government members, who shall be the Secretary, the Chairman of the Commission, and the Secretary of the Treasury, acting directly or at any time through the Deputy Secretary of Transportation, the Vice Chairman of the Commission, or the Deputy Secretary of the Treasury, as the case may be; and

(3) seven nongovernment members, who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) one to be selected from a list of qualified individuals recommended by the Association of American Railroads or its successor who are representatives of profitable railroads;

(B) one to be selected from a list of qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations or its successor who are representative of railroad labor;

(C) one to be selected from a list of qualified individuals recommended by the National Governors Conference;

(D) one to be selected from a list of qualified individuals recommended by the National League of Cities and Conference of Mayors;

(E) two to be selected from lists of qualified individuals recommended by shippers and organizations representative of significant shipping interests including small shippers;

(F) one to be selected from lists of qualified individuals recommended by financial institutions, the financial community, and recognized financial leaders.

As used in this paragraph, a list of qualified individuals shall consist of not less than three individuals.

Except for the members appointed under paragraphs (1) and (3) (A), (B), (E), and (F), no member of the Board may have any employment or other direct financial relationship with any railroad. A member of the Board who is not otherwise an employee of the Federal Government may receive \$300 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) **TERMS OF OFFICE.**—The terms of office of the nongovernment members of the Board of Directors of the Association first taking office shall expire as designated by the President at the time of nomination—two at the end of the second year; two at the end of the fourth year; and three at the end of the sixth year. The term of office of the Chairman of such Board shall be 6 years. Successors to members of such Board shall be appointed in the same manner as the original members and, except in the case of government members, shall have terms of office expiring 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(f) **QUORUM.**—Beginning 45 days after the date of incorporation of the Association, six members of the Board, including three of the nongovernment members, shall constitute a quorum for the transaction of any function of the Association.

(g) **PRESIDENT.**—The Board of Directors of the Association, upon the recommendation of the Secretary, shall appoint a qualified individual to serve as the President of the Association at the pleasure of the Board. The President of the Association, subject to the direction of the Board, shall manage and supervise the affairs of the Association.

(h) **EXECUTIVE COMMITTEE.**—The Board of Directors of the Association shall have an executive committee which shall consist of the Chairman of the Board, the Secretary, the Chairman of the Commission, and two other members who shall be selected by the members of the board.

(i) **FINANCE COMMITTEE.**—The Board of Directors of the Association shall have a Finance Committee which shall consist of the Chairman of such Board, the Secretary, and the Secretary of the Treasury (acting directly or, at any time, through their respective Deputy Secretaries). The Finance Committee is authorized to exercise only such powers as are vested in it pursuant to any provision of this Act. The vesting of such powers in the Finance Committee shall not be deemed to relieve the Board of Directors of its authority to exercise any other powers of the Association, none of which may be delegated to the Finance Committee, or of its general authority to

study, analyze, and make advisory findings with respect to any matter relevant to the role of the Association as an investor in securities of the Corporation. Notwithstanding any provision of State law, (1) the Finance Committee, without any requirement of review or approval by the Board of Directors of the Association, is authorized to establish, revise, and maintain its own rules and procedures, by majority vote of the members thereof, and (2) the Board of Directors of the Association shall not have power to take, and shall not take, any action affecting the membership of the Finance Committee or limiting the exercise by the Finance Committee of the powers vested in it pursuant to any provision of this Act.

(j) MISCELLANEOUS.—(1) The Association shall have a seal which shall be judicially recognized.

(2) The Administrator of General Services shall furnish the Association with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(3) The Secretary is authorized to transfer to the Association or the Corporation rights in intellectual property which are directly related to the conduct of the functions of the Association or the Corporation, to the extent that the Federal Government has such rights and to the extent that transfer is necessary to carry out the purposes of this Act.

(4) Any reference in this Act to the Secretary of the Treasury is to the Secretary of the Treasury or the person who is at the time performing the duties of the Office of the Secretary of the Treasury in accordance with law or, in his absence, the Deputy Secretary of the Treasury. Any reference in this Act to the Chairman of the Commission is to the Chairman of the Commission or the person who is at the time performing the duties of the Chairman of the Commission in accordance with law.

(k) USE OF NAMES.—No person, except the Association, shall hereafter use the words "United States Railway Association" as a name for any business purpose. Violations of this provision may be enjoined by any court of general jurisdiction in an action commenced by the Association. In any such action, the Association may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damage) in an amount not to exceed \$100 for each day during which such violation was committed. The district courts of the United States shall have jurisdiction over actions brought under this subsection, without regard to the amount in controversy or the citizenship of the parties.

GENERAL POWERS AND DUTIES OF THE ASSOCIATION

SEC. 202. (a) GENERAL.—To carry out the purposes of this Act, the Association is authorized to—

(1) engage in the preparation and implementation of the final system plan;

(2) issue obligations under section 210 of this title; make loans under section 211 of this title; purchase or otherwise acquire or receive and hold and dispose of securities (whether debt or equity) of the Corporation under section 216 of this title and exercise all

of the rights, privileges, and powers of a holder of any such securities; and issue certificates of value under section 306 of this Act;

(3) provide assistance to States and local or regional transportation authorities in accordance with section 403 of this Act;

(4) sue and be sued, complain and defend, in the name of the Association and through its own attorneys; adopt, amend, and repeal bylaws governing the operation of the Association and such rules and regulations as are necessary to carry out the authority granted under this Act; conduct its affairs, carry on operations, and maintain offices;

(5) appoint, fix the compensation, and assign the duties of such attorneys, agents, consultants, and other full- and part-time employees as it deems necessary or appropriate; except that (1) no officer of the Association, including the Chairman, may receive compensation at a rate in excess of that prescribed for level I of the Executive Schedule under section 5312 of title 5, United States Code; and (2) no individual may hold a position in violation of regulations which the Secretary shall establish to avoid conflicts of interest and to protect the interests of the public;

(6) acquire and hold such real and personal property as it deems necessary or appropriate in the exercise of its responsibilities under this Act, and to dispose of any such property held by it;

(7) consult with the Secretary of the Army and the Chief of Engineers and request the assistance of the Corps of Engineers, and the Secretary of the Army may direct the Corps of Engineers to cooperate fully with the Association, the Corporation, or any entity designated in accordance with section 206(c)(1)(C) in order to carry out the purposes of this Act;

(8) consult on an ongoing basis with the Chairman of the Federal Trade Commission and the Attorney General to assess the possible anticompetitive effects of various proposals and to negotiate provisions which would, to the greatest extent practicable in accordance with the purposes of this Act and the goal set forth in section 206(a)(5) of this title, alleviate any such anticompetitive effects;

(9) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as it deems advisable; and

(10) enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its functions and duties with any person (including a government entity).

(b) **DUTIES.**—In addition to its duties and responsibilities under other provisions of this Act, the Association shall—

(1) prepare a survey of existing rail services in the region including patterns of traffic movement; traffic density over identified lines; pertinent costs and revenues of lines; and plant, equipment, and facilities (including yards and terminals);

(2) prepare an economic and operational study and analysis of present and future rail and express service needs in the region;

the nature and volume of the traffic in the region now being moved by rail and express or likely to be moved by rail in the future; the extent to which available alternative modes of transportation could move such traffic as is now carried by railroads in reorganization; the relative economic, social, and environmental costs that would be involved in the use of such available alternative modes, including energy resource costs; and the competitive or other effects on profitable railroads;

(3) prepare a study of rail passenger services in the region, in terms of scope and quality;

(4) consider the views of the Office and of all government officials and persons who submit views, reports, or testimony under section 205(d)(1) of this title or in the course of proceedings conducted by the Office;

(5) consider methods of achieving economies in the cost of rail system operations in the region including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; relocation; rehabilitation and modernization of equipment, track, and other facilities; and abandonment of lines consistent with meeting needs and service requirements; together with the anticipated economic, social, and environmental costs and benefits of each such method;

(6) consider the effect on railroad employees of any restructuring of rail services in the region;

(7) make available to the Secretary, the Director of the Office and appropriate committees of the Congress all studies, data, and other information acquired or developed by the Association; and

(8) study the feasibility of coordinating rail and express service in the region.

(c) **INVESTMENT OF FUNDS.**—Uncommitted funds of the Association shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other investments which are lawful investments for fiduciary, trust, or public funds.

(d) **EXEMPTION FROM TAXATION.**—The Association, including its franchise, capital reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, any commonwealth, territory, dependency, or possession thereof, or by any State or political subdivision thereof, except that any real property of the Association shall be subject to taxation to the same extent according to its value as other real property is taxed.

(e) **ANNUAL REPORT.**—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Association during the preceding fiscal year. Each such report shall include (1) the Association's statement of specific and detailed objectives for the activities and programs conducted and assisted under this Act; (2) statements of the Association's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this Act, measured through the end of the preceding fiscal year; (3) recommendations with respect to any legislation or

administrative action which the Association deems necessary or desirable; (4) a statistical compilation of the obligations issued, certificates of value issued, securities purchased, and loans made under this Act; (5) a summary of outstanding problems confronting the Association, in order of priority; (6) all other information required to be submitted to the Congress pursuant to any other provision of this Act; and (7) the Association's projections and plans for its activities and programs during the next fiscal year.

(f) **BUDGET.** The receipts and disbursements of the Association (other than administrative expenses referred to in subsection (g) of this section and receipts and disbursements under section 216 of this title and section 306 of this Act) in the discharge of its functions shall not be included in the totals of the budget of the United States Government, and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on a budget of the United States Government. The Chairman of the Association shall transmit annually to the Congress a budget for program activities and for administrative expenses of the Association. The Chairman shall report annually to the Congress the amount of net lending of the Association, which would be included in the totals of the budgets of the United States Government, if the Association's activities were not excluded from those totals as a result of this section.

(g) **ACCOUNTABILITY.**—(1) Section 201 of the Government Corporation Control Act (31 U.S.C. 856) is amended by striking out "and" at the end of clause (6) and by inserting immediately before the period at the end thereof the following: ", (8) the United States Railway Association".

(2) The Chairman of the Association shall transmit annually to the Office of Management and Budget a budget for administrative expenses of the Association. Whenever the Association submits any budget estimate or request to the Office of Management and Budget, it shall concurrently transmit a copy of the estimate or request to the Congress. Within budgetary constraints of the Congress, the maximum feasible and prudent budgetary flexibility shall be provided to the Association to permit effective operations.

ACCESS TO INFORMATION

SEC. 203. (a) PLANNING.—Each railroad operating in the region shall provide such relevant information as may be requested by the Secretary, the Office, or the Association in connection with the performance of their respective functions under any provision of this Act.

(b) **OTHER.**—Each railroad or other person or government entity seeking financial assistance from the Association shall maintain and make available such records, make and submit such reports, and provide such data, materials, or other relevant information as may be requested by the Association.

(c) **ENFORCEMENT.**—Where authorized under subsection (a) or (b) of this section and upon presenting appropriate credentials and a written notice of inspection authority, any officer or employee duly designated by the Secretary, the Office, or the Association may, at reasonable

times, inspect records, papers, processes, rolling stock, systems, equipment, or facilities and may, on furtherance of their respective functions under this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or other order the attendance and testimony of such witnesses and the production of such information as is deemed advisable. Subpoenas shall be issued under the signature of the Secretary, the Director of the Office, or the Chairman or President of the Association and may be served by any duly designated individual. In case of contumacy or refusal to obey such a subpoena or order by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon petition, have jurisdiction to issue to such person an order requiring him to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(d) CONGRESS.—Nothing in this section shall authorize the withholding of information from any duly authorized committee of the Congress.

REPORT

SEC. 204. (a) PREPARATION.—Within 30 days after the date of enactment of this Act, the Secretary shall prepare a comprehensive report containing his conclusions and recommendations with respect to the geographic zones within the region in and between which rail service should be provided and the criteria upon which such conclusions and recommendations are based. The Secretary may use as a basis for the identification of such geographic zones the standard metropolitan statistical areas, groups of such areas, counties, or groups of counties having similar economic characteristics such as mining, manufacturing, or farming.

(b) SUBMISSION.—The Secretary shall submit the report required by subsection (a) of this section to the Office, the Association, the Governor and public utilities commission of each State studied in the report, local governments, consumer organizations, environmental groups, the public, and the Congress. The Secretary shall further cause a copy of the report to be published in the Federal Register.

RAIL SERVICES PLANNING OFFICE

SEC. 205. (a) ESTABLISHMENT.—The Rail Services Planning Office is established as an office in the Commission. The Office shall function continuously pursuant to the provisions of this Act, and shall be administered by a director.

(b) DIRECTOR.—The Director of the Office shall be appointed for a term of 6 years by the Chairman of the Commission with the concurrence of 5 members of the Commission. He shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Director of the Office shall administer and be responsible for the discharge of the functions and duties of the Office from the date he takes office unless removed for cause by the Commission.

(c) **POWERS.**—The Director of the Office is subject to the direction of, and shall report to, such member of the Commission as the Chairman thereof shall designate. The Chairman may designate himself as that member. Such Director is authorized, with the concurrence of such member or (in case of disagreement) the Chairman of the Commission, to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Office with any person (including a government entity). Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized, and shall give careful consideration to a request, to furnish to the Director of the Office, upon written request, on a reimbursable basis or otherwise, such assistance as the Director deems necessary to carry out the functions and duties of the Office. Such assistance includes transfer of personnel with their consent and without prejudice to their position and rating.

(d) **DUTIES.**—In addition to its duties and responsibilities under other provisions of this Act and under the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall—

(1) assist the Commission in studying and evaluating any proposal, submitted to the Commission pursuant to section 5 (2) or (3) of the Interstate Commerce Act (49 U.S.C. 5 (2) or (3)), for a merger, consolidation, unification or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to part I of such Act;

(2) assist the Commission in developing, with respect to economic regulation of transportation, policies which are likely to result in a more competitive, energy-efficient, and coordinated transportation system which utilizes each mode of transportation to its maximum advantage to meet the transportation service needs of the Nation;

(3) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation subsidies to maintain in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies, with such criteria to include the following considerations: rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than (A) the cost of termination of rail service over such properties measured by increased fuel consumption and operational costs for alternative modes of transportation, (B) the cost to the gross national product in terms of reduced output of goods and services, (C) the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby, and (D) the cost to the environment measured by damage caused by increased pollution;

(4) conduct an ongoing analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of such analysis, and advise the Commission of the results of such evaluation;

(5) within 180 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, issue additional regulations, after conducting a proceeding in accordance with the provisions of section 553 of title 5, United States Code, which contain—

(A) standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

(B) standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17 of the Urban Mass Transportation Act of 1964;

(6) determine and publish, and from time to time revise and reissue, standards for determining (A) the “revenue attributable to the rail properties,” (B) the “avoidable costs of providing service,” (C) a “reasonable return on the value,” and (D) a “reasonable management fee,” as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of title 5, United States Code; and

(7) employ and utilize the services of attorneys and such other personnel as may be required in order properly to protect the interests of those communities and users of rail service which, for whatever reason (such as their size or location) might not otherwise be adequately represented in the course of the reorganization process under this Act, until the assumption of such duties by the Office of Rail Public Counsel pursuant to section 27(4)(d) of the Interstate Commerce Act (49 U.S.C. 27 (4)(d)).

(e) **ADDITIONAL DUTIES.**—(1) Within 270 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall issue additional regulations, after conducting a proceeding in accordance with section 553 of title 5, United States Code. Such regulations shall (A) develop an accounting system which will permit the collection and publication by the Corporation or by profitable railroads providing service over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units, and (B) determine the “avoidable costs of providing rail freight service”, as that phrase is used in section 1a(6)(a)(ii)(A) of the Interstate Commerce Act. The Office may, at any time, revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed pursuant to this subsection.

(2) Upon the request of a State in the region, within 90 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall prepare and publish an evaluation of the economic viability of any or all light density lines within such State which are not designated for inclusion in the final system plan. Such an evaluation shall include an analysis of the actions which

may be necessary to make the operation of rail services over any such line economical. The results of each such evaluation shall be transmitted to the requesting State and published in the Federal Register, not later than 1 year after the date such request is received by the Office.

FINAL SYSTEM PLAN

SEC. 206. (a) GOALS.—The final system plan shall be formulated in such a way as to effectuate the following goals:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail and express service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

(3) the establishment of improved high-speed rail passenger service, consonant with the recommendations of the Secretary in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation";

(4) the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads), and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

(5) the retention and promotion of competition in the provision of rail and other transportation services in the region;

(6) the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

(7) the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

(b) FACTORS.—The final system plan shall be based upon due consideration of all factors relevant to the realization of the goals set forth in subsection (a) of this section. Such factors include the need for and the cost of rehabilitation and modernization of track, equipment, and other facilities; methods of achieving economies in the cost of rail operations in the region; means of achieving rationalization of rail services and the rail service system in the region; marketing studies; the impact on railroad employees; consumer needs; traffic

analyses; financial studies; and any other factors identified by the Association under section 202(b) of this title or in the report of the Secretary required under section 204(a) of this title.

(c) DESIGNATIONS.—The final system plan shall designate—

(1) which rail properties of railroads in reorganization in the region or of railroads leased, operated, or controlled by any railroad in reorganization in the region—

(A) shall be transferred to the Corporation: *Provided*, That the Corporation shall, within 95 days after the effective date of the final system plan, give notice to the Association of which such rail properties, if any, are to be transferred to a subsidiary of the Corporation in the event that the Board of Directors of the Association finds that such transfer would be consistent with the final system plan;

(B) shall be offered for sale to a profitable railroad operating in the region and, if such offer is accepted, operated by such railroad; the plan shall designate what additions shall be made to the designation under subparagraph (A) of this paragraph and what alternative designations shall be made under this paragraph in the event such profitable railroad fails to accept such offer:

(C) shall be purchased, leased, or otherwise acquired from the Corporation by the National Railroad Passenger Corporation in accordance with the exercise of its option under section 601(d) of this Act for improvement to achieve the goal set forth in subsection (a) (3) of this section;

(D) may be purchased or leased from the Corporation by (i) a State or a local or regional transportation authority to meet the needs of commuter and intercity rail passenger service, or (ii) the National Railroad Passenger Corporation to meet the needs of improved rail passenger service over intercity routes, other than properties designated pursuant to subparagraph (C) of this paragraph; and

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or recreation. In carrying out this subparagraph, the Association shall solicit the views and recommendations of the Secretary, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

(2) which rail properties of profitable railroads operating in the region may be offered for sale to the Corporation or to other profitable railroads operating in the region subject to paragraphs (3) and (4) of subsection (d) of this section. Any rail properties designated to be offered for sale to the Corporation may be sold instead to a subsidiary of the Corporation.

(d) **TRANSFERS.**—All transfers or conveyances pursuant to the final system plan shall be made in accordance with, and subject to, the following principles:

(1) All rail properties to be transferred to the Corporation or any subsidiary thereof by a profitable railroad, by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be transferred in exchange for stock and other securities of the Corporation or any subsidiary thereof (including obligations of the Association) and the other benefits accruing to such railroad by reason of such transfer.

(2) All rail properties to be conveyed to a profitable railroad operating in the region by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be conveyed in exchange for compensation from the profitable railroad.

(3) Notwithstanding any other provision of this Act, no acquisition under this Act shall be made by any profitable railroad operating in the region without a determination with respect to each such transaction and all such transactions cumulatively (A) by the Association, upon adoption and release of the preliminary system plan, that such acquisition or acquisitions will not materially impair the profitability of any other profitable railroad operating in the region or of the Corporation, and (B) by the Commission, which shall be made within 90 days after adoption and release by the Association of the preliminary system plan, that such acquisition or acquisitions will be in full accord and comply with the provisions and standards of section 5 of part I of the Interstate Commerce Act (49 U.S.C. 5). All determinations made by the Association in the correction to the preliminary system plan published on April 11, 1975 (40 Fed. Reg. 16377), shall be treated for all purposes as if they had been made upon adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to such correction shall be treated for all purposes as if they had been made within 90 days after adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to acquisitions by profitable railroads referred to in any supplement to the preliminary system plan published under section 207(b)(2) of this title shall be deemed to be timely if made prior to the adoption of the final system plan under section 207(c) of this title. The determination by the Association shall not be reviewable in any court. The determination by the Commission shall not be reviewable in any court.

(4) Where the final system plan designates specified rail properties of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by a railroad in reorganization in the region, to be offered for sale to and operated by a profitable railroad operating in the region, such designation shall terminate 7 days after the date of the enactment of the Railroad Revitaliza-

tion and Regulatory Reform Act of 1976 unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such offer. Any such offer may be modified until the date of acceptance thereof, unless such modification results in an offer for the sale of rail properties at less than the net liquidation value thereof. Where the final system plan designates specified rail properties of a profitable railroad operating in the region as authorized to be offered for sale or lease to the Corporation or to other profitable railroads operating in the region, such designation and authorization shall terminate 95 days after the effective date of the final system plan unless, prior to such date, a binding agreement with respect to such properties has been entered into and concluded.

(5) All properties—

(A) transferred by the Corporation pursuant to sections 206(c) (1) (C) and 601(d) of this Act;

(B) transferred by the Corporation to any State (or local or regional transportation authority), pursuant to subsection (c) (1) (D) of this section, or

(C) transferred by the Corporation to any State, local or regional transportation authority, or the National Railroad Passenger Corporation, within 900 days after the date of conveyance, pursuant to section 303(b) (1) of this Act, to meet the needs of commuter or intercity rail passenger service, shall be transferred at a value related to the value received from the Corporation pursuant to the final system plan for the transfer to such Corporation of such properties. The value of any such properties, which are transferred pursuant to subparagraph (B) or (C) of this paragraph, shall be adjusted to reflect the value attributable to any applicable maintenance and improvement provided by the Corporation (to the extent the Corporation has not been released from the obligation to pay for such improvements) and the cost to the Corporation of transferring such properties. The Corporation, its Board of Directors, and its individual directors shall not be liable to any party, for money damages or in any other manner, solely by reason of the fact that the Corporation transferred property pursuant to section 303 of this Act to meet the needs of commuter or intercity rail passenger service or for purposes of providing rail marine freight floating service, except as otherwise provided with respect to the Corporation pursuant to section 303(c) (2) of this Act.

(6) Notwithstanding any statement to the contrary in the final system plan, a State (or a local or regional transportation authority) shall not be required to deliver to the Corporation a firm commitment to acquire rail properties designated to such State or authority prior to 7 days after the date of enactment of this paragraph.

(7) Notwithstanding any contrary provision in the options conveyed to the Corporation by railroads in reorganization, or railroads leased, operated, or controlled by a railroad in reorganization, with respect to the acquisition by the Corporation pursuant to the final system plan, on behalf of a State (or a local or regional transportation authority) of rail properties designated under sec-

tion 206(c) (1) (D) of this title, such options shall not be deemed to have expired prior to 7 days after the date of enactment of this paragraph. The exercise by the Corporation of any such option shall be effective if it is made, prior to the expiration of such 7-day period, in the manner prescribed in such options.

(e) **CORPORATION FEATURES.**—The final system plan shall set forth—

(1) pro forma earnings for the Corporation, as reasonably projected and considering the additions or changes in the designation of rail properties to be operated by the Corporation which may be made under subsection (d) (4) of this section;

(2) the capital structure of the Corporation, based on the pro forma earnings of the Corporation as set forth, including such debt capitalization as shall be reasonably deemed to conform to the requirements of the public interest with respect to railroad debt securities, including the adequacy of coverage of fixed charges; and

(3) the manner in which employee stock ownership plans may, to the extent practicable, be utilized for meeting the capitalization requirements of the Corporation, taking into account (A) the relative cost savings compared to conventional methods of corporate finance; (B) the labor cost savings; (C) the potential for minimizing strikes and producing more harmonious relations between labor organizations and railway management; (D) the projected employee dividend incomes; (E) the impact on quality of service and prices to railway users; and (F) the promotion of the objectives of this Act of creating a financially self-sustaining railway system in the region which also meets the service needs of the region and the Nation.

(f) **VALUE.**—The final system plan shall designate the value of all rail properties to be transferred under the final system plan and the value of the securities and other benefits to be received for transferring those rail properties to the Corporation in accordance with the final system plan.

(g) **OTHER PROVISIONS.**—The final system plan may recommend arrangements among various railroads for joint use or operation of rail properties on a shared ownership, cooperative, pooled, or condominium-type basis, subject to such terms and conditions as may be specified in the final system plan. The final system plan shall also make such designations as are determined to be necessary in accordance with the provisions of section 402 or 403 of this Act.

(h) **OBLIGATIONAL AUTHORITY.**—The final system plan shall recommend the amount of obligations of the Association which are necessary to enable it to implement the final system plan.

(i) **TERMS AND CONDITIONS FOR SECURITIES.**—The final system plan may include terms and conditions for any securities to be issued by the Corporation in exchange for the conveyance of rail properties under the final system plan which in the judgement of the Association will minimize any actual or potential debt burden on the Corporation. Any such terms and conditions for securities of the Corporation which purport to directly obligate the Association shall not become effective without affirmative approval, with or without modification by a joint resolution of the Congress.

(j) Any rail properties over which rail service was being provided as of the date of enactment of this Act, and which were recommended in the preliminary system plan for transfer to the Corporation, shall be deemed to be designated in the final system plan for transfer to the Corporation under subsection (c)(1)(A) of this section. Any designation in the final system plan, pursuant to subsection (c)(1)(B) of this section, of overhead trackage rights to be acquired by a profitable railroad operating in the region over specified rail properties to be acquired by the Corporation, where such designation does not (1) authorize such profitable railroad to interchange traffic with at least one railroad, or (2) provide for the connection of portions of such profitable railroad's rail properties, and where the transfer of ownership of such rail properties (including trackage rights) to such profitable railroad was recommended in the preliminary system plan, and the Commission has made a determination with respect thereto, in accordance with subsection (d)(3) of this section, shall be deemed to authorize such profitable railroad to interchange traffic with the Corporation and any other profitable railroad connecting with such specified rail properties.

ADOPTION OF FINAL SYSTEM PLAN

SEC. 207. (a) PRELIMINARY SYSTEM PLAN.—(1) Within 420 days after the date of enactment of this Act, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this Act and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this Act. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register. The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on any supplement to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of such supplement, not later than 30 days after the release of such supplement.

(b) APPROVAL.—(1) Within 120 days after the date of enactment of this Act each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act (11 U.S.C. 205) and that the public

interest would be better served by continuing the present reorganization proceedings than by a reorganization under this Act. Within 60 days after the submission of the report by the Office, under section 205(d) (1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this Act. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this Act, each such court shall order that the reorganization be proceeded with pursuant to this Act unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act (11 U.S.C. 205) and that the public interest would be better served by such a reorganization than by a reorganization under this Act, or (2) finds that this Act does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this Act. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its decision within 80 days after such appeal is taken. There shall be no review of the decision of the special court.

(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a railroad subject to reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) shall not be proceeded with pursuant to this Act, the court having jurisdiction over such railroad may, upon a petition which is filed within 10 days after the date of enactment of this subsection by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this Act unless it finds that this Act does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the special court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the special court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this Act, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.

(c) **ABORTION.**—Within 540 days after the date of enactment of this Act, the executive committee of the Association shall prepare and submit a final system plan for the approval of the Board of Directors of the Association. A copy of such submission shall be simultaneously presented to the Commission. The submission shall reflect evaluation

of all responses and summaries of responses received, testimony at any public hearings, and the results of additional study and review. Within 30 days thereafter, the Board of Directors of the Association shall by a majority vote of all its members approve a final system plan which meets all of the requirements of section 206 of this title.

(d) **REVIEW OF COMMISSION.**—Within 30 days following the adoption of the final system plan by the Association under subsection (c) of this section and the submission of such plan to Congress under section 208(a) of this title, the Commission shall submit to the Congress an evaluation of the final system plan delivered to both Houses of Congress.

REVIEW BY CONGRESS

SEC. 208. (a) GENERAL.—The Board of Directors of the Association shall deliver the final system plan adopted by the Association to both Houses of Congress and to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce of the Senate. The final system plan shall be deemed approved at the end of the first period of 60 calendar days of continuous session of Congress after such date of transmittal unless either the House of Representatives or the Senate passes a resolution during such period stating that it does not favor the final system plan.

(b) **REVISED PLAN.**—If either the House or the Senate passes a resolution of disapproval under subsection (a) of this section, the Association, with the cooperation and assistance of the Secretary and the Office, shall prepare, determine, and adopt a revised final system plan. Each such revised plan shall be submitted to Congress for review pursuant to subsection (a) of this section.

(c) **COMPUTATION.**—For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment *sine die*; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) **ADDITIONS.**—(1) The supplemental report, dated September 18, 1975, to the final system plan, and the provisions of the Association's official errata supplement to the final system plan, dated December 1, 1975, including all designations made therein, shall be treated for all purposes as if they had been part of and included in the final system plan adopted by the Association and reviewed by the Congress. The final system plan shall, for all purposes, be deemed to be approved as modified and amended by such supplemental report and such supplement.

(2) The Association may, upon petition of any State, modify the final system plan to make further designations with respect to rail properties of railroads in reorganization in the region designated for transfer to the Corporation under such plan, if such designations (A) are likely to result in improved rail service on such rail properties and connecting rail properties, and (B) would not materially impair the profitability of the Corporation. Such designations, including designations of such rail properties to a State, a profitable railroad, or a responsible person, may be made at any time prior to delivery of the final system plan to the special court under section 209(c) of this title.

Such further designations shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress, and the final system plan shall for all purposes be deemed to be approved as modified by such designations. Any action of the Association with respect to any such petition shall not be subject to review by any court.

(3) (A) Within 20 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Association may, by notice to the Congress and by publication in the Federal Register, modify, supplement, or add to the designations of rail properties in the final system plan if the Association finds such actions are necessary to—

(i) achieve the efficient implementation of the final system plan, or

(ii) provide for the offer to profitable railroads of rail properties designated in the final system plan to the Corporation, if such properties are not essential in the operation of other rail properties of the Corporation but are or would be integrally related to the operation of rail properties of (or which are offered pursuant to the final system plan to) such profitable railroad, or

(iii) provide for the designation of additional rail properties to the Corporation or to a subsidiary thereof to enable the Corporation to serve efficiently a line of railroad designated to the Corporation in the final system plan if such line does not connect with any other line of railroad so designated to the Corporation or if such line would be served more efficiently as a consequence of such designation.

Any designation to a profitable railroad pursuant to this paragraph shall comply with the second sentence of section 206(d)(4) of this title, and shall only be made upon a finding by the Association that such designation is integrally related to an offer of rail properties to a profitable railroad in the final system plan, that the goals of the final system plan require that the rail properties be operated as a part of the rail properties included in such offer, and that the implementation of such designation will not materially and adversely affect the impact of such offer on the profitability of the Corporation or any profitable railroad operating in the region. Any designation to a profitable railroad pursuant to this subsection, which amends any prior offer, shall terminate 30 days after the date of enactment of this paragraph unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such amendment to the prior offer.

(B) If a line of railroad or any segment thereof is designated for rail service in the final system plan, no designation may be made by the Association pursuant to this paragraph which would result in such line or segment not being so designated. Any designations made pursuant to this paragraph shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress. The final system plan shall for all purposes be deemed to be approved as amended by such designations.

(C) Any designations made pursuant to this paragraph shall not be subject to review by any court.

(D) Any labor agreements entered into under section 508 of this Act shall be subject to further negotiations for any modifications which may be necessary to implement designations made pursuant to this paragraph.

JUDICIAL REVIEW

SEC. 209. (a) GENERAL.—Notwithstanding any other provision of law, the final system plan which is adopted by the Association and which becomes effective after review by the Congress is not subject to review by any court except in accordance with this section. After the final system plan becomes effective under section 208 of this title, it may be reviewed with respect to matters concerning the value of the rail properties to be conveyed under the plan and the value of the consideration to be received for such properties.

(b) SPECIAL COURT.—Within 30 days after the date of enactment of this Act, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of title 28, United States Code, for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the "special court") which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected may be a judge assigned to a proceeding involving any railroad in reorganization in the region under section 77 of the Bankruptcy Act (11 U.S.C. 205). The special court is authorized to exercise the powers of a district judge in any judicial district with respect to such proceedings and such powers shall include those of a reorganization court. The special court shall have the power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region. The special court may issue rules for the conduct of any proceedings under this section and under section 305 of this Act, including rules with respect to the time within which motions may be filed, and with respect to appropriate representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 305). No determination by the panel under this subsection may be reviewed in any court.

(c) DELIVERY OF PLAN TO SPECIAL COURT.—Within 90 days after its effective date, the Association shall deliver a certified copy of the final system plan to the special court and shall certify to the special court—

- (1) which rail properties of the respective railroads in reorganization in the region, and of any person leased, operated, or controlled by such railroads in reorganization are to be transferred to the Corporation or any subsidiary thereof, in accordance with the final system plan;

- (2) which rail properties of the respective railroads in reorganization in the region or person leased, operated, or controlled by such railroads in reorganization are to be conveyed to profitable railroads, in accordance with the final system plan;

(3) the amount, terms, and value of the securities of the Corporation or any subsidiary thereof (including any certificates of value of the Association) to be exchanged for those rail properties to be transferred to the Corporation or any subsidiary thereof pursuant to the final system plan, and as indicated in paragraph (1) of this subsection; and

(4) that the transfer of rail properties in exchange for securities of the Corporation or any subsidiary thereof (including any certificates of value of the Association) and other benefits is fair and equitable and in the public interest.

Notwithstanding any other provisions of this subsection and subsection (d) of this section, the time for the delivery of a certified copy of the final system plan shall be March 12, 1976, and may be extended to a date not more than 30 days thereafter, prescribed in a notice filed by the Association not later than February 17, 1976, with the special court, the Congress, and each court referred to in such subsection (d). Such notice shall contain the certification of the Association that an orderly conveyance of rail properties cannot reasonably be effected before the date for conveyance determined with respect to such notice. The time prescribed in section 303(a) of this Act shall be determined with respect to the date prescribed in such notice.

(d) **BANKRUPTCY COURTS.**—Within 90 days after its effective date, the Association shall deliver a certified copy of the final system plan to each district court of the United States or any other court having jurisdiction over a railroad in reorganization in the region and shall certify to each such court—

(1) which rail properties of that railroad in reorganization are to be transferred to the Corporation or any subsidiary thereof under the final system plan; and

(2) which rail properties of that railroad in reorganization, if any, are to be conveyed to profitable railroads operating in the region, under the final system plan.

(e) **ORIGINAL AND EXCLUSIVE JURISDICTION.**—(1) Notwithstanding any other provision of law, any civil action—

(A) for injunctive or other relief against the Association from the enforcement, operation, or execution of this Act or any provision thereof, or from any action taken by the Association pursuant to authority conferred or purportedly conferred under this Act;

(B) challenging the constitutionality of this Act or any provision thereof;

(C) challenging the legality of any action of the Association, or any failure of the Association to take any action, pursuant to authority conferred or purportedly conferred under this Act;

(D) to obtain, inspect, copy, or review any document in the possession or control of the Association that would be discoverable in litigation pursuant to section 303(c) of this Act;

(E) brought after a conveyance, pursuant to section 303(b) of this Act, to set aside or annul such conveyance or to secure in any way the reconveyance of any rail properties so conveyed; or

(F) with respect to continuing reorganization and supplemental transactions, in accordance with section 305 of this Act; shall be within the original and exclusive jurisdiction of the special

court. The special court shall not hear or determine any such action prior to the date of conveyance, pursuant to section 303(b) (1) of this Act, except as the Constitution may require. Relief shall not be granted in any action referred to in subparagraph (A), (C), or (E) unless the person seeking such relief establishes that the Association acted in reckless or deliberate disregard of applicable law.

(2) The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify or implement any of the orders entered by such court pursuant to section 303(b) of this Act in order to effect the purposes of this Act or the goals of the final system plan. During the pendency of any proceeding described in this paragraph, the special court may enter such orders as it determines to be appropriate, including orders enjoining, restraining, conditioning, or limiting any conveyance, transfer, or use of any asset or right which is subject to such an order or which is at issue in such a proceeding, or which involves the enforcement of any liens or encumbrances upon such assets or rights. Any orders pursuant to this paragraph which interpret, alter, amend, modify, or implement orders entered by the special court shall be final and shall not be restrained or enjoined by any court.

(3) A final order or judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States, except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of this Act, in whole or in part, or of any action taken under this Act, shall be reviewable by direct appeal to the Supreme Court of the United States in the same manner that an injunctive order may be appealed under section 1253 of title 28, United States Code. Such review is exclusive and any petition or appeal shall be filed not more than 20 days after entry of such order or judgment.

(f) **DISPOSITION OF CASH DEPOSITS.**—Whenever the compensation which is deposited with the special court under section 303(a) of this Act is in the form of cash, such cash shall be invested and reinvested upon such terms and conditions as the special court shall determine, pending the making of the findings referred to in paragraphs (1), (2), and (3) of section 303(c) of this Act. Notwithstanding section 303(c) (4) of this Act, the special court may order (1) the income from such investments, (2) the dividends or interest, if any, received on any securities or obligations deposited with the special court under such section 303(a), and (3) the income, if any, received with respect to any other form of compensation so deposited, to be distributed to the trustee of each railroad in reorganization and to any person leased, operated or controlled by such a railroad which conveyed the right, title, and interest in the rail properties with respect to which such cash, securities, obligations, or other compensation have been so deposited with the special court. Notwithstanding section 303(c) (4) of this Act, the special court may, within 90 days after the date of conveyance of rail properties pursuant to section 303(b) of this Act, order up to 25 percent of any cash (including investments made with cash) and other compensation deposited with the special court to be distributed to such trustee or person. On petition of the applicable trustee or

person, the special court may order such additional distributions as it finds reasonable and appropriate, prior to the making of the findings referred to in paragraphs (1), (2), and (3) of such section 303(c).

(g) **STAY OF COURT PROCEEDINGS.**—The special court may stay or enjoin any action or proceeding in any State court or in any court of the United States other than the Supreme Court if such action or proceeding is contrary to any provision of this Act, impairs the effective implementation of this Act, or interferes with the execution of any order of the special court pursuant to this Act.

OBLIGATIONS OF THE ASSOCIATION

SEC. 210. (a) GENERAL.—To carry out the purposes of this Act, the Association is authorized to issue bonds, debentures, trust certificates, securities, or other obligations (herein cited as “obligations”) in accordance with this section. Such obligations shall have such maturities and bear such rate or rates of interest as are determined by the Association with the approval of the Secretary of the Treasury. Such obligations shall be redeemable at the option of the Association prior to maturity in the manner stipulated in each such obligation, and may be purchased by the Association in the open market at a price which is reasonable.

(b) **MAXIMUM OBLIGATIONAL AUTHORITY.**—The aggregate principal amount (exclusive of interest or additions to principal on account of accrual of interest) of obligations issued by the Association under this section which may be outstanding at any one time shall not exceed \$395,000,000. No obligations or proceeds thereof shall be issued or made available after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 except—

(1) to meet existing or potential commitments for loans under section 211 of this title made or applied for prior to January 1, 1976; and

(2) for the purpose of providing loans pursuant to subsections (g) and (h) of section 211 of this title.

(c) **GUARANTEES.**—The Secretary shall guarantee the payment of principal and interest on all obligations issued by the Association in accordance with this Act and which the Association requests be guaranteed. All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States for the payment of which its full faith and credit are pledged.

(d) **VALIDITY.**—No obligation issued by the Association under this section shall be terminated, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Association. Such an obligation shall be conclusive evidence that it is in compliance with this section, has been approved, and is legal as to principal, interest, and other terms. An obligation of the Association shall be valid and incontestable in the hands of a holder, except as to fraud, duress, mutual mistake of fact, or material misrepresentation by or involving such holder.

(e) **THE SECRETARY OF THE TREASURY.**—If at any time the moneys available to the Secretary are insufficient to enable him to discharge his responsibilities under subsection (c) of this section, he shall issue notes or other obligations to the Secretary of the Treasury in such forms and

denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury is authorized and directed to purchase any such obligations and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. At any time, the Secretary of the Treasury may sell any such obligations, and all sales, purchases, and redemptions of such obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(f) **AUTHORIZATION FOR APPROPRIATIONS.**—There are hereby authorized to be appropriated to the Secretary such amounts as are necessary to discharge the obligations of the United States arising under this section.

(g) **LAWFUL INVESTMENTS.**—All obligations issued by the Association shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All such obligations issued pursuant to this section shall be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

LOANS

SEC. 211. (a) GENERAL.—The Association is authorized, in accordance with the provisions of this section and such rules and regulations as it shall prescribe, to make loans to the Corporation, the National Railroad Passenger Corporation, and other railroads (including a railroad in reorganization which has been found to be reorganizable under section 77 of the Bankruptcy Act pursuant to section 207(b) of this title) in the region, for purposes of achieving the goals of this Act; to a State or local or regional transportation authority pursuant to section 403 of this Act; and to provide assistance in the form of loans to any railroad which (A) connects with a railroad in reorganization, and (B) is in need of financial assistance to avoid reorganization proceedings under section 77 of the Bankruptcy Act (11 U.S.C. 205). No such loan shall be made by the Association to a railroad unless such loans shall, where applicable, be treated as an expense of administration. The rights referred to in the last sentence of section 77(j) of the Bankruptcy Act (11 U.S.C. 205(j)) shall in no way be affected by this Act.

(b) **APPLICATIONS.**—Each application for such a loan shall be made in writing to the Association in such form and with such content and other submissions as the Association shall prescribe to protect reasonably the interests of the United States. The Association shall publish a notice of the receipt of each such application in the Federal Register and shall afford interested persons an opportunity to comment thereon.

(c) **TERMS AND CONDITIONS.**—Each loan shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Association deems appropriate. Such loan shall bear interest at a rate not less than the greater of a rate determined by the Secretary of the Treasury taking into consideration (1) the rate prevailing in the private market for similar loans as determined by the Secretary of the Treasury, or (2) the current average yield on outstanding marketable obligations of the Association with remaining periods of maturity comparable to the average maturities of such loans, plus such additional charge, if any, toward covering costs of the Association as the Association may determine to be consistent with the purposes of this Act.

(d) **MODIFICATIONS.**—The Association is authorized to approve any modification of any provision of a loan under this section, including the rate of interest, time of payment of interest or principal, security, or any other term or condition, upon agreement of the recipient of the loan and upon a finding by the Association that such modification is equitable and necessary or appropriate to achieve the policy declared in subsection (f) of this section.

(e) **PREREQUISITES.**—The Association shall make a finding in writing, before making a loan to any applicant under this section, that—

(1) the loan is necessary to achieve the goals of this Act or to prevent insolvency;

(2) it is satisfied that the business affairs of the applicant will be conducted in a reasonable and prudent manner; and

(3) the applicant has offered such security as the Association deems necessary to protect reasonably the interests of the United States.

(f) **POLICY.**—It is the intent of Congress that loans made under this section shall be made on terms and conditions which furnish reasonable assurance that the Corporation or the railroads to which such loans are granted will be able to repay them within the time fixed and that the goals of this Act are reasonably likely to be achieved.

(g) **PRE-CONVEYANCE LOANS TO THE CORPORATION.**—During the period between the effective date of the final system plan and the date of the conveyance of rail properties pursuant to section 303(b) of this Act, the Association may make such loans in such amounts to the Corporation as the Association deems essential to provide for the purchase by the Corporation of material, supplies, equipment, and services necessary to permit the orderly and efficient implementation of the final system plan. Notwithstanding any inability of the Association during such period to make the finding required by subsection (e)(3) of this section because of any existing contingencies, the Association may make any such loans to the Corporation, subject to—

(1) the most favorable terms and conditions for assuring timely repayment and security as may then be reasonably available, and

(2) the requirement that any loan to the Corporation under this subsection be refinanced immediately out of the proceeds of the first sale by the issuance of debentures under section 216 of this title.

In order to assure that necessary funds are available to the Corporation for implementation of the final system plan, the Corporation is

authorized to accept such loans as may be approved by the Association under this subsection, and any such acceptance shall be deemed for all purposes to constitute a reasonable and prudent business judgment in compliance with any fiduciary obligations imposed on the Corporation or its directors. For purposes of this subsection, the term "Corporation" includes a subsidiary of the Corporation.

(h) **LOANS FOR PAYMENT OF OBLIGATIONS.**—(1) (A) The Association is authorized, subject to the limitations set forth in section 210(b) of this title, to enter into loan agreements, in amounts not to exceed, at any given time, \$350,000,000 in the aggregate principal amount, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b) (1) of this Act, under which the Corporation, the National Railroad Passenger Corporation, and any profitable railroad entering into such agreement will agree to meet existing or prospective obligations of the railroads in reorganization in the region which the Association, in accordance with procedures established by the Association, determines should be paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, on behalf of such railroads in reorganization, in order to avoid disruptions in ordinary business relationships. Such obligations shall be limited to—

(i) amounts claimed by suppliers (including private car lines) of materials or services utilized or purchased in current rail operations;

(ii) claims by shippers arising from current rail services;

(iii) payments to railroads for settlement of current interline accounts and all other current accounts and obligations;

(iv) claims of employees arising under the collective-bargaining agreements of the railroads in reorganization in the region and subject to section 3 of the Railway Labor Act (including claims for accrued vacation and wages and similar claims arising in connection with labor and services performed);

(v) claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers' Liability Act (45 U.S.C. 51-60);

(vi) amounts required for adequate funding of accrued pension benefits existing at the time of a conveyance or discontinuance of service under employee pension benefit plans described in section 505(a) of this Act;

(vii) amounts required to provide adequate funding for payment, when due, of claims deriving from membership in any employee voluntary relief plan which provides benefits to its members and their beneficiaries in the event of sickness, accident, disability, or death, and to which both a railroad in reorganization and employee members have made contributions;

(viii) amounts required to provide adequate funding for payment, when due, of medical and life insurance benefits for employees (whether or not their employment was governed by a collective bargaining agreement) on account of their service with a railroad in reorganization prior to the date of conveyance pursuant to section 303(b) (1) of this Act, and for individ-

uals who retired, prior to such date of conveyance, from service with a railroad in reorganization;

(ix) amounts required to discharge the obligations of each such railroad in reorganization to nonemployee claimants for personal injuries suffered during the period such railroad has been in reorganization; and

(x) amounts required to discharge any obligation of a railroad in reorganization in the region to the National Railroad Passenger Corporation, arising out of a contract between such railroad in reorganization and such Corporation under which such railroad in reorganization is required to provide a suitable rail passenger station, in any case in which such railroad in reorganization sold a rail passenger station pursuant to a judicial order of condemnation prior to April 1, 1976.

(B) The Association shall make a loan pursuant to subparagraph (A) of this paragraph if, notwithstanding any other requirement of this subsection, it finds that the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is entitled to a loan pursuant to section 303(b)(6), 504(e), or 504(g) of this Act, or if, with respect to an obligation referred to in subparagraph (A) of this paragraph, it finds that—

(i) provision for the payment of such obligation was not included in the financial projections of the final system plan;

(ii) such obligation arose from rail operations prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act and is, under other applicable law, the responsibility of a railroad in reorganization in the region, and a claim is presented to a railroad in reorganization in the region, or the Corporation within 2 years after the date of enactment of the Rail Amendments of 1976;

(iii) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligation by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is for services or materials, the furnishing of which served to avoid disruptions in ordinary business relationships prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act, or is necessary to avoid postconveyance disruptions in ordinary business relationships;

(iv) the transferor is unable to pay such obligation within a reasonable period of time; and

(v) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from a railroad in reorganization in the region for an obligation paid on its behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation, and the joint agreement—

(I) provides for the Corporation to receive reimbursement from the Association for any expenses incurred in seeking reimbursement from any railroad in reorganization in the region for an obligation paid on its behalf under this subsection; and

(II) includes a stipulation of the exact procedures the Corporation shall undertake to avoid the finding, referred to in paragraph (6)(A)(i) of this subsection, that it has not exercised due diligence.

(2) The trustees of each railroad in reorganization in the region shall attempt to negotiate agency agreements with the Corporation, the National Railroad Passenger Corporation, or a profitable railroad for the processing of all accounts receivable and accounts payable attributable to operations prior to the conveyance of property pursuant to section 303(b)(1) of this Act and for the payment of only those accounts payable which relate to obligations of the estates identified in paragraph (1) of this subsection. If any railroad in reorganization in the region fails to conclude such an agreement within a reasonable time prior to such conveyance, the applicable reorganization courts, after giving all parties an opportunity to be heard, shall prescribe the terms of such an agency arrangement by order, giving due consideration to the need, wherever possible, to make such agreements uniform among the various estates. Nothing in this subsection shall be construed as permitting any district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region to enjoin, restrain, or limit the Corporation, the National Railroad Passenger Corporation, or a profitable railroad from applying, to payment of the obligations of the estates identified in paragraph (1) of this subsection, amounts collected as (A) accounts receivable pursuant to this paragraph, (B) cash or other current assets identified pursuant to paragraph (3) of this subsection, or (C) proceeds of loans pursuant to paragraph (1) of this subsection. Any agency agreement executed prior to the date of the enactment of the Rail Transportation Improvement Act shall be deemed amended to the extent necessary to conform such agreement or order to the provisions of this paragraph. Nothing in this paragraph shall be construed to affect any payment made prior to such date of enactment with respect to obligations other than those identified in paragraph (1) of this subsection.

(3) The Association may, not less than 30 days prior to the date of conveyance pursuant to section 303(b)(1) of this Act, petition each district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region for an order, which shall be entered prior to such conveyance, and which—

(A) identifies that cash and other current assets of the estate of such railroad which shall be utilized to satisfy obligations of the estates identified in paragraph (1) of this subsection; and

(B) provides for the application by the trustees of such railroads and their agents, consistent with the principles of reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 203) and with the agency agreement specified in paragraph (2) of this subsection, of all such current assets, including cash available as of or subsequent to such date of conveyance, to the payment in the postconveyance period of the obligations of the estates identified in paragraph (1) of this subsection.

(4) (A) Each obligation of a railroad in reorganization in the region which is paid with financial assistance under paragraph (1) of this subsection shall be processed, on behalf of such railroad, by the

Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate. An obligation of a railroad in reorganization in the region shall be paid, on behalf of such railroad, by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate, if—

(i) such obligation is deemed by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate, to have been, on the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act, the obligation of a railroad in reorganization in the region;

(ii) such obligation accrues after such date of conveyance but as a result of rail operations conducted prior to such date, and the trustees of such railroad in reorganization acknowledge that it is an obligation of such railroad; or

(iii) the district court of the United States having jurisdiction over such railroad in reorganization in the region approves such obligation as a valid administrative claim against such railroads; to the extent that payment is required under a loan agreement with the Association under such paragraph (1).

(B) The Association shall resolve any disputes among the Corporation, the National Railroad Passenger Corporation, and a profitable railroad concerning which of them shall process and pay any particular obligation on behalf of a particular railroad in reorganization.

(C) The Corporation, the National Railroad Passenger Corporation, or a profitable railroad shall have a direct claim, as a current expense of administration, for reimbursement from the estate of a railroad in reorganization in the region for all obligations of such estate (plus interest thereon) which are paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, as the case may be. The right of the Corporation or the National Railroad Passenger Corporation to receive reimbursement under this subparagraph from the estate of a railroad in reorganization in the region.

(D)(i) Except as provided in clause (ii) of this subparagraph, any funds held in an escrow account by a railroad in reorganization on the date of enactment of the Rail Transportation Improvement Act which are thereafter determined to be cash and other current assets of the estate of such railroad in reorganization, for purposes of paragraph (3) of this subsection, shall be applied as follows—

(I) first, to the reduction of any outstanding loans to the Corporation by the Association, pursuant to paragraph (1) of this subsection, the proceeds of which were used to discharge obligations of such railroad in reorganization;

(II) second, to the Association to the extent of any such loans which have been forgiven pursuant to paragraph (5) of this subsection; and

(III) third, to the payment of any remaining obligations of such railroad in reorganization, in accordance with the provision of the agency agreement entered into pursuant to paragraph (2) of this subsection.

(ii) The manner of disposition set forth in clause (i) of this subparagraph shall not apply with respect to a railroad in reorganization if the Secretary (I) determines that a different disposition of assets is necessary to carry out a reorganization plan of such railroad in reorga-

nization, and that such different disposition adequately protects the interests of the United States, and (II) transmits his determination to the court having jurisdiction over the reorganization of such railroad.

(5) (A) If, at any time, the Finance Committee of the Association determines that the failure of the Corporation to receive full reimbursement with interest from the estate of a railroad in reorganization in the region for any obligation of such estate paid pursuant to this subsection could adversely affect the fairness and equity of the transfers and conveyances pursuant to section 303(b)(1) of this Act, or that the failure of the National Railroad Passenger Corporation to receive such full reimbursement plus interest for any such obligation would be contrary to the public interest, the Association shall forgive the indebtedness, plus accrued interest, of the Corporation or of the National Railroad Passenger Corporation incurred pursuant to paragraph (1) of this subsection in the amount recommended by the Finance Committee. The Association shall have a direct claim, as a current expense of administration of the estate of such railroad in reorganization, equal to the amount by which loans of the Corporation or of the National Railroad Passenger Corporation, plus interest, have been forgiven. Such direct claim shall not be subject to any reduction by way of setoff, cross-claim, or counter-claim which the estate of such railroad in reorganization may be entitled to assert against the Corporation, the National Railroad Passenger Corporation, the Association, or the United States.

(B) The direct claim of the Association under this paragraph, and any direct claim authorized under paragraph (4) of this subsection, shall be prior to all other administrative claims of the estate of a railroad in reorganization, except claims arising under trustee's certificates or from default on the payment of such certificates. The Corporation, the National Rail Passenger Corporation, or a profitable railroad, as the case may be, shall, with respect to each direct claim for reimbursement pursuant to paragraph (4) of this subsection, file a proof of administrative expense claim with the trustees of the railroad in reorganization from whom reimbursement is sought. Each such proof of administrative expense claim shall set forth, by category and amount, the obligations of such railroad in reorganization which were paid pursuant to such paragraph (4).

(6) Notwithstanding any other provision of this subsection, the Association shall forgive any loan made to the Corporation or the National Railroad Passenger Corporation pursuant to this subsection, plus accrued interest thereon, on the 3rd anniversary date of any such loan, except that the Association shall not forgive any loan or portion thereof, in accordance with this paragraph, if—

(A) the Finance Committee makes an affirmative finding, with respect to such loan or portion thereof, that—

(i) the Corporation has not exercised due diligence in executing the procedures adopted pursuant to paragraph (1) (B) (v) of this subsection, and

(ii) the failure of the Association to forgive such loan or portion thereof will not adversely affect the ability of the Corporation to become financially self-sustaining;

(B) the Finance Committee so directs the Association; and

(C) neither House of the Congress disapproves such affirmative finding and direction, in accordance with the following provisions of this paragraph.

A copy of each such finding, the reasons therefor, and such direction made by the Finance Committee, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such finding and direction so transmitted shall become effective immediately, and shall remain in effect, unless, within the first period of 30 calendar days of continuous session of Congress after the date of transmittal of such finding and direction to Congress, either House of Congress disapproves such finding and direction in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act (31 U.S.C. 1401 (5)).

(7) For purposes of this subsection, the term "Corporation" includes a subsidiary of the Corporation.

(i) **ELECTRIFICATION.**—Upon application by the Corporation, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of the Railroad Revitalization and Regulatory Reform Act of 1976, guarantee obligations of the Corporation for the purpose of electrifying high-density mainline routes if the Secretary finds that such electrification will return operating and financial benefits to the Corporation and will facilitate compatibility with existing or renewed electrification systems. The aggregate unpaid principal amount of obligations which may be guaranteed by the Secretary under this paragraph shall not exceed \$200,000,000 at any one time.

RECORDS, AUDIT, AND EXAMINATION

SEC. 212. (a) RECORDS.—Each recipient of financial assistance under this title, whether in the form of loans, obligations, or other arrangements, shall keep such records as the Association or the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance and such other records as will facilitate an effective audit.

(b) **AUDIT AND EXAMINATION.**—The Association, the Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of 3 years after the implementation of the final system plan, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Association, the Secretary, or the Comptroller General may be related or pertinent to the loans, obligations or other arrangements referred to in subsection (a) of this section. The Association or any of its duly authorized representatives shall, until any financial assistance received under this title has been repaid to the Association, have access to any such materials which concern any matter that may bear upon—

- (1) the ability of the recipient of such financial assistance to make repayment within the time fixed therefor;
- (2) the effectiveness with which the proceeds of such assistance is used; and
- (3) the implementation of the final system plan and the realization of the declaration of policy of this Act.

EMERGENCY ASSISTANCE PENDING IMPLEMENTATION

SEC. 213. (a) EMERGENCY ASSISTANCE.—The Secretary is authorized, pending the implementation of the final system plan, to pay to the trustees of railroads in reorganization such sums as are necessary for the continued provision of essential transportation services by such railroads. Such payments shall be made by the Secretary upon such reasonable terms and conditions as the Secretary establishes, except that recipients must agree to maintain and provide service at a level no less than that in effect on the date of enactment of this Act. Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 215 of this Act, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this Act or to improve such designated properties, such agreement shall contain the conditions set forth in section 215(b) of this Act.

(b) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this section such sums as are necessary, not exceed \$282,000,000, to remain available until expended. Of amounts authorized to be appropriated under this subsection, \$50,000,000 shall be available solely to pay to the trustees of railroads in reorganization such sums as may be necessary to provide such railroads with amounts equal to revenues attributable to tariff increases proposed by such railroads and suspended by the Interstate Commerce Commission during the calendar year 1975, if the Secretary determines that such payments are necessary to carry out this section.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 214. (a) SECRETARY.—There are authorized to be appropriated to the Secretary for purposes of preparing the reports and exercising other functions to be performed by him under this Act such sums as are necessary, not to exceed \$12,500,000, to remain available until expended. There are authorized to be appropriated to the Secretary such sums as may be necessary to discharge the obligations of the United States arising under section 303(c) (5) of this Act.

(b) OFFICE.—There are authorized to be appropriated to the Commission for the use of the Office in carrying out its functions under this Act such sums as are necessary, not to exceed \$7,000,000, to remain available until expended. The budget for the Office shall be submitted by the Commission directly to the Congress and shall not be subject to review of any kind by any other agency or official of the United States. Moneys appropriated for the Office shall not be withheld by any agency or official of the United States or used by the Commission for any purpose other than the use of the Office. No part of any other moneys

appropriated to the Commission shall be withheld by any other agency or official of the United States to offset any moneys appropriated pursuant to this subsection.

(c) ASSOCIATION.—For the period beginning May 1, 1976, and ending September 30, 1977, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed \$20,000,000. Sums appropriated under this subsection are authorized to remain available until September 30, 1978.

INTERIM AGREEMENTS

SEC. 215. (a) PURPOSES.—Prior to the date upon which rail properties are conveyed to the Corporation under this Act, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this Act;

(2) to improve rail properties of such railroads; and

(3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this Act, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

(b) CONDITIONS.—Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

(1) to the extent that physical condition is used as a basis for determining, under section 206(f) or 303(c) of this Act, the value of properties subject to such an agreement and designated for transfer to the Corporation under the final system plan, the physical condition of the properties on the effective date of the agreement shall be used; and

(2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

(c) OBLIGATIONS.—Notwithstanding section 210(b) of this title, the Association shall issue obligations under section 210(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed \$300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

(d) **CONVEYANCE.**—The Secretary may convey to the Corporation or any subsidiary thereof with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 213 of this Act.

DEBENTURES AND SERIES A PREFERRED STOCK

SEC. 216. (a) GENERAL.—The Association is authorized, in accordance with the provisions of this section, and such rules and regulations as it may prescribe, to invest from time to time in the securities of the Corporation by purchasing (1) up to \$1,000,000,000 of debentures issued by the Corporation, and (2) after the acquisition of such debentures, up to \$1,100,000,000 of the Series A preferred stock of the Corporation.

(b) **PURPOSES AND PROCEDURE FOR INVESTMENT.**—(1) The Association is authorized to purchase debentures and, thereafter, series A preferred stock of the Corporation at such times and in such amounts as may be required and requested by the Corporation in accordance with the terms and conditions governing such purchases (which shall be prescribed by the Association), to provide—

(A) for the modernization, rehabilitation and maintenance of rail properties of the Corporation;

(B) for the acquisition of equipment and other capital needs;

(C) for the refinancing of indebtedness which was incurred by the Corporation under section 211 of this title or which was incurred under section 215 of this title and assumed by the Corporation; or

(D) working capital as contemplated by the final system plan.

(2) Purchases of up to \$1,000,000,000 of debentures and, thereafter, of up to \$1,100,000,000 of series A preferred stock shall be made by the Association as required and requested by the Corporation, unless the Finance Committee makes an affirmative finding that—

(A) the Corporation has failed in any material respect to comply with any covenants or undertakings made to the Association and such failure remains uncorrected;

(B) the Corporation has failed substantially (as determined by performance within the margins prescribed by the Board of Directors) to attain the overall operating (including rehabilitation) and financial results projected for the Corporation in the final system plan (including any modifications of such projected results and of the performance margins applicable to such projected results which are jointly approved by the Finance Committee and the Board of Directors and which would improve the possibility that the Corporation will attain such projected results and perform within such margins, as modified); or

(C) it is not reasonably likely, taking into consideration all relevant factors including the overall operating (including rehabilitation) and financial results achieved by the Corporation, that the Corporation will be able to become financially self-sustaining without requiring Federal financial assistance substantially in excess of the amounts authorized in this section.

(c) **FINDING, DIRECTION, AND REVIEW BY CONGRESS.**—(1) If the Finance Committee makes an affirmative finding pursuant to subsection (b) (2) of this section, it may direct the Association—

(A) not to purchase any debentures or series A preferred stock of the Corporation after the date of such affirmative finding; or
 (B) to purchase debentures or series A preferred stock of the Corporation, after the date of such affirmative finding, only in such amounts, at such times, and on such terms and conditions (notwithstanding subsection (e) (1) of this section) as the Finance Committee determines to be appropriate to the role of the Association as an investor in such debentures and series A preferred stock.

(2) A copy of each affirmative finding, the reasons therefor, and each direction made by the Finance Committee under paragraph (1) of this subsection, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such direction so transmitted shall become finally effective and is required to be implemented by the Association, unless within the first period of 30 calendar days of continuous session of Congress after the date of its transmittal to Congress either House of Congress disapproves such direction (except that such direction shall become finally effective immediately upon approval of such direction by both Houses of Congress) in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act (31 U.S.C. 1401(5)). During review by the Association and Congress, the Association shall take no action inconsistent with the direction of the Finance Committee pursuant to paragraph (c) (1) of this section, except to the extent the Association finds necessary, in its discretion, to assure continuous orderly operation of the Corporation.

(3) If the Congress, pursuant to paragraph (2) of this subsection, disapproves a direction submitted to the Association pursuant to paragraph (1) of this subsection, the Association shall continue to purchase the debentures or series A preferred stock of the Corporation as otherwise provided in this title until such time as a direction is submitted under this section which is not so disapproved (or affirmatively approved). The powers of the Association and of the Board of Directors of the Association shall remain in effect except to the extent modified by any such direction. If any such direction is disapproved by either House of Congress, the Finance Committee may, not earlier than 30 days after the date of such disapproval, make (and the Board of Directors of the Association shall transmit) any additional affirmative finding and direction with respect to the same matter, which direction shall become effective in accordance with paragraph (2) of this subsection. An affirmative finding and direction under this subsection, or action by the Association during a review thereof by the Congress, may not be held unlawful or set aside by any reviewing court on the ground that such finding and direction or action were not adequate to meet the requirements of subparagraph (A), (E), or (F) of section 706(2) of title 5, United States Code.

(4) Notwithstanding any other provision of this section, or any terms and conditions governing its purchase of securities of the Corporation, the Association shall, upon written application by the Corporation at least 30 days prior to such investment, make an initial investment in debentures of the Corporation within 60 days after the date of conveyance of rail properties pursuant to section 303(b) (1) of this Act. Such initial investment shall be limited to such amounts as the Association and Finance Committee, acting jointly, determine are necessary for the continued and orderly operations of the Corporation prior to any additional investment.

(5) Not later than 60 days after the date of conveyance pursuant to section 303(b) (1) of this Act, the Association shall select 6 individuals to serve as members of the Board of Directors of the Corporation, subject to the provisions of section 301(d) of this Act.

(d) **TERMS AND CONDITIONS.**—Notwithstanding any other provision of State law, the debentures and the series A preferred stock of the Corporation shall have such terms and conditions, not inconsistent with the final system plan or this title, as may be prescribed by the Association, except as follows:

(1) The Corporation shall not be required to issue to the Association additional shares of series A preferred stock of the Corporation as a dividend on any such stock.

(2) The dividends payable on series A preferred stock of the Corporation shall not be cumulative and shall be paid in cash when and to the extent that there is "cash available for restricted cash payments," as that term is defined in the final system plan.

(3) After the Association calls for redemption of the certificates of value, no shares of series A preferred stock of the Corporation shall be issued in lieu of interest on the debentures of the Corporation and, to the extent such interest is not payable in cash by reason of the absence of sufficient "cash available for restricted cash payment," the Corporation shall deliver to the holders of the debentures contingent interest notes in a face amount equal to such unpaid interest.

(4) If the Board of Directors of the Association and the Finance Committee, acting jointly, modify the terms or conditions governing the purchase of debentures or series A preferred stock of the Corporation pursuant to subsection (e) (1) of this section, or if the Finance Committee waives compliance with any term, condition, provision, or covenant of such securities pursuant to subsection (e) (2) of this section, the Finance Committee may require the Corporation to issue contingent interest notes in such amount as, in the determination of the Finance Committee, will provide protection for the United States, in the event of bankruptcy, reorganization, or receivership of the Corporation, equal to the protection the United States would have had in the absence of such modification or waiver.

(5) The contingent interest notes issued pursuant to this section shall bear interest compounded annually at the rate of 8 percent per annum and such notes and the accumulated interest thereon shall be payable only in the event of bankruptcy, reorganization, or receivership of the Corporation occurring prior to the repayment and redemption of all outstanding debentures and

accumulated series A preferred stock of the Corporation. The contingent interest notes and the accumulated interest thereon shall have the same priority in bankruptcy, reorganization, or receivership as the debentures of the Corporation. The other terms and conditions of the contingent interest notes shall be as set forth in an agreement to be entered into between the Association and the Corporation prior to issuance of any debentures.

(e) MODIFICATIONS, WAIVERS, AND CONVERSIONS.—(1) The Board of Directors of the Association and the Finance Committee, acting jointly, may agree with the Corporation to modify any of the terms and conditions governing the purchase by the Association of securities of the Corporation, upon a finding that such action is necessary or appropriate to achieve the purposes of this Act or the goals of the final system plan.

(2) The Finance Committee may, in its discretion and upon a finding that such action is necessary or appropriate to achieve the purposes of this Act or the goals of the final system plan, waive compliance with any term, condition, provision, or covenant of the securities of the Corporation held by the Association, including any provision of such securities with respect to redemption of principal or issuance price, payment of interest or dividends, or any term or condition governing the purchase of such securities.

(3) Notwithstanding any provision of State law, there shall be no conversion of the debentures of the Corporation into series A preferred stock of the Corporation, as provided in the terms and conditions of the debentures and pursuant to the final system plan, unless the Board of Directors of the Association and the Finance Committee jointly determine to effect such conversion.

(f) APPROPRIATION.—There is authorized to be appropriated to the Association \$2,100,000,000 to be used for the purchase of securities of the Corporation in accordance with this section. All sums received by the Association on account of the holding or disposition of any such securities shall be deposited in the general fund of the Treasury.

TITLE III—CONSOLIDATED RAIL CORPORATION

FORMATION AND STRUCTURE

SEC. 301. (a) ESTABLISHMENT.—There shall be established within 300 days after the date of enactment of this Act, in accordance with the provisions of this section, a corporation to be known as the Consolidated Rail Corporation or such other corporate name as may be duly adopted by the Corporation.

(b) STATUS.—The Corporation shall be a for-profit corporation establishment under the laws of a State and shall not be an agency or instrumentality of the Federal Government. The Corporation shall be deemed a common carrier by railroad under section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), shall be subject to the provisions of this Act and, to the extent not inconsistent with such Acts, shall be subject to applicable State law. The principal office of the Corporation or of its principal railroad operating subsidiary shall be located in Philadelphia in the Commonwealth of Pennsylvania.

(c) INCORPORATORS.—(1) The members of the executive committee of the Association shall be the incorporators of the Corporation and shall

take whatever steps are necessary to establish the Corporation, including the filing of articles of incorporation.

(2) Notwithstanding any provision of State law, after the date of enactment of this paragraph, the members of the executive committee of the Association (including duly authorized representatives of members who are authorized by this Act to be represented) and the chief executive officer and chief operating officer of the Corporation shall adopt the bylaws of the Corporation and serve as the Board of Directors of the Corporation until all members of the Board of Directors of the Corporation have been selected in accordance with subsection (d) of this section. The chief executive officer shall serve as chairman of such Board until a chairman thereof is selected pursuant to subsection (d) of this section, after which time such chairman shall serve at the pleasure of such Board.

(d) BOARD OF DIRECTORS.—(1) Notwithstanding any provision of State law, the articles of incorporation and bylaws of the Corporation shall provide that the Board of Directors of the Corporation shall consist of 13 members selected in accordance with the articles and bylaws of the Corporation, as follows:

(A) six individuals selected by the holders of the Corporation's debentures and series A preferred stock voting as one class, with every \$100 principal amount of debentures, and every \$100 liquidation amount of series A preferred stock each receiving one vote for directors;

(B) three individuals selected by the holders of the Corporation's series B preferred stock; and

(C) two individuals selected by the holders of the Corporation's common stock.

(2) The chief executive officer and the chief operating officer of the Corporation shall also serve on the Board, but the chief executive officer and chief operating officer of the Corporation shall not be entitled to vote on the election or removal of either. In the event a vacancy occurs on the Board of Directors due to death, disability, or resignation of a director (other than resignations pursuant to this subsection), such vacancy shall be filled only by a vote of the holders of the class of securities that initially elected such director. Two members of the Board selected by the holders of the Corporation's debentures and series A preferred stock shall resign when the total of the principal amount of the outstanding debentures and the amount of the liquidation amount of the outstanding series A preferred stock, once having exceeded \$1,500,000,000, has been reduced below that amount; two additional members of the Board selected by the holders of the Corporation's debentures and series A preferred stock of the Corporation shall resign when the total of the principal amount of the outstanding debentures and the amount of the liquidation amount of the outstanding series A preferred stock, once having exceeded \$1,500,000,000, has been reduced below \$750,000,000. The two remaining members of the Board selected by the holders of the Corporation's debentures and series A preferred stock shall resign when all the debentures and series A preferred stock have been redeemed by the Corporation. As directors resign in accordance with the foregoing provisions, the election of corporate directors to fill the vacancies created by their resignations shall be governed by applicable State law and the articles and bylaws of the Corporation.

(e) **INITIAL CAPITALIZATION.**—(1) In order to carry out the final system plan, the Corporation is authorized to issue debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities.

(2) Debentures and series A preferred stock shall be issued initially to the Association. Series B preferred stock and common stock shall be issued initially to the estates of railroads in reorganization in the region, to railroads leased, operated, and controlled by railroads in reorganization in the region, and to other persons leased, operated or controlled by a railroad in reorganization who are transferors of rail properties in exchange for rail properties transferred to the Corporation pursuant to the final system plan. Notwithstanding any other provisions of State or Federal law, the series B preferred stock and common stock shall have terms and conditions not inconsistent with the final system plan. As a condition of its investment in the Corporation, the Association may require that the Corporation adopt limitations consistent with the final system plan on the circumstances under which dividends on the series B preferred stock and common stock are payable so long as any of the debentures or series A preferred stock are outstanding. Notwithstanding anything to the contrary in the final system plan, the initial authorized number of shares of series B preferred stock may be 35,000,000, and the Corporation may issue initially for the purpose of the deposit required under section 303 (a) (1) of this Act such numbers of shares of series B preferred and common stock as the Association shall certify to the Special Court pursuant to section 209(c) (1) (3) of this Act, including any modifications in such numbers of shares as may be ordered by the Special Court for the purpose of, and in connection with, such deposit and certification.

(f) **OFFICERS.**—The officers of the Corporation shall include a chief executive officer and a chief operating officer, who shall be appointed by the Board of Directors and who shall serve as the pleasure of the Board; and such other officers as shall be provided for in the bylaws of the Corporation.

(g) **VOTING TRUSTEES.**—For and during the period between the deposit of securities of the Corporation with the special court, in accordance with section 303(a) of this title, and the distribution of such securities, in accordance with section 303(c) of this title, the special court shall, within 30 days after the date of conveyance pursuant to section 303(b) (1) of this Act, appoint one or more voting trustees for each class of securities which is so deposited. Such voting trustees shall, on behalf of the distributees, exercise the rights of the holders of such securities as their interests may appear. Within 30 days after such appointment, such voting trustees shall select members of the Board of Directors of the Corporation on behalf of the holders of the class of securities whose rights they exercise pursuant to this subsection.

(h) **ANNUAL REPORT.**—The Corporation shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities and accomplishments of the Corporation during the preceding fiscal year.

(i) **LIABILITY OF DIRECTORS.**—No director of the Corporation shall be liable, for money damages or otherwise, to any party by reason of

the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which he in good faith reasonably believed to be required by law or vested in him in his capacity as a director of the Association or as an officer of the United States. The United States shall indemnify such person against all judgments, amounts paid in settlement, and costs and expenses (including fees of accountants, experts, and attorneys), actually and reasonably incurred in connection with any such action, suit, or proceeding in which such person is determined to have met such standard of conduct. This subsection shall not be construed to grant any immunity from any criminal law of the United States.

(j) **CORPORATE SIMPLIFICATION.**—In the interest of corporate simplification, the Corporation, in implementing the final system plan, shall undertake, as soon as possible and pursuant to financial assistance provided by the Railroad Revitalization and Regulatory Reform Act of 1976, to acquire all interests in rail lines and related rail properties otherwise conveyed to the Corporation, upon the tender of such interests to it, so as to eliminate any remaining intermediate layers of ownership or interest, such as leaseholds, owned or held by persons who are neither a railroad, a railroad in reorganization, nor controlled by a railroad in reorganization. Any option conditions regarding the purchase price for such interests, in existence since prior to January 2, 1974, shall be deemed to be conclusive of fair and equitable value.

POWERS AND DUTIES OF THE CORPORATION

SEC. 302. The Corporation shall have all of the powers and is subject to all of the duties vested in it under this Act, in addition to the powers conferred upon it under the laws of the State or States in which it is incorporated and the powers of a railroad in any State in which it operates. The Corporation is authorized and directed to—

- (a) acquire rail properties designated in the final system plan to be transferred or conveyed to it;
- (b) operate rail service over such rail properties except as provided under sections 304(e) and 601(d)(3) of this Act;
- (c) rehabilitate, improve, and modernize such rail properties; and
- (d) maintain adequate and efficient rail services.

So long as 50 per centum or more, as determined by the Secretary of the Treasury, of the outstanding indebtedness of the Corporation consists of obligations of the Association or other debts owing to or guaranteed by the United States, the Corporation shall not engage in activities which are not related to transportation.

VALUATION AND CONVEYANCE OF RAIL PROPERTIES

SEC. 303. (a) DEPOSIT WITH COURT.—Within 10 days after delivery of a certified copy of a final system plan pursuant to section 209(c) of this Act—

- (1) the Corporation, in exchange for the rail properties of the railroads in reorganization in the region and of railroads leased, operated, or controlled by railroads in reorganization in the region to be transferred to the Corporation, shall deposit with the special

court all of the stock and other securities of the Corporation or any subsidiary thereof and certificates of value issued by the Association designated in the final system plan to be exchanged for such rail properties;

(2) each profitable railroad operating in the region and each State or responsible person (including a government entity) purchasing rail properties from a railroad in reorganization in the region, or from a railroad leased, operated, or controlled by a railroad in reorganization in the region, as provided in the final system plan shall deposit with the special court the compensation to be paid for such rail properties.

(b) CONVEYANCE OF RAIL PROPERTIES.—(1) The special court shall, within 10 days after deposit under subsection (a) of this section of the securities of the Corporation, certificates of value issued by the Association, and compensation from the profitable railroads operating in the region, States, and responsible persons order the trustee or trustees of each railroad in reorganization in the region to convey forthwith to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons, all right, title, and interest in the rail properties of such railroad in reorganization and shall itself order the conveyance of all right, title, and interest in the rail properties of any person leased, operated, or controlled by such railroad in reorganization that are to be conveyed to them under the final system plan as certified to such court under section 209(d) of this Act. In any case where the special court orders the trustee or trustees of a railroad in reorganization in the region to execute and deliver deeds or other instruments conveying rail properties to the Corporation or a subsidiary thereof or to a profitable railroad operating in the region or a State or responsible person, those deeds or other instruments may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who have been duly authorized to perform such acts on behalf of the trustee or trustees by the district court of the United States or any other court having jurisdiction over the respective railroad in reorganization in the region. Notwithstanding any provision of State or local law, in any case where deeds or other instruments have been executed, acknowledged, or delivered by a representative of the trustee or trustees of a railroad in reorganization in the region in accordance with the previous sentence, such execution, acknowledgment, and delivery, and the deeds or other instruments to which they pertain, shall have the same legal effect as they would have had if the trustee or trustees had themselves executed, acknowledged and delivered such deeds or other instruments.

(2) All rail properties conveyed to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation authority under which financial support from such State, or local or regional transportation authority was being provided at the time of enactment of this Act for the continuance of rail passenger service

or any lien or encumbrance of no greater than 5 years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court.

(3) (A) (i) Notwithstanding any other provision of this Act, if an interest in railroad rolling stock is included in the rail properties conveyed pursuant to subsection (b) (1) of this section, and if such conveyance is in accordance with the requirements of clause (ii) of this subparagraph, the conveyance of such properties shall be deemed an assignment. Any such assignment shall relieve the assignor of liability for any breach which occurs after the date of such conveyance, except that such assignor shall remain liable for any breach, event of default, or violation of covenant which occurred (and any charges or obligations which accrued) prior to the date of such conveyance, regardless of whether the assignee thereof assumes such liabilities, charges or obligations. If any such liabilities, charges, or obligations (accrued prior to the date of such conveyance) are paid by or on behalf of any person or entity other than such assignor, such person or entity shall have a claim to direct reimbursement, as a current expense of administration, from such assignor, together with interest on the amount so paid.

(ii) A conveyance referred to in clause (i) of this subparagraph may be effected only if—

(I) the Corporation or a subsidiary thereof, the profitable railroad operating in the region, or the State or responsible person to whom such conveyance is made assumes all of the obligations under any applicable conditional sale agreement, equipment trust agreement, or lease with respect to such rolling stock (including any obligations which accrued prior to the date on which such properties are conveyed), and

(II) such conveyance is made subject to such obligations.

As used in this subparagraph, the term railroad rolling stock means assets which could be carried in Interstate Commerce Commission account numbers 52, 53, 54, and 57.

(B) Subject to the provisions of this paragraph, the provisions of this Act shall not affect the title and interests of any lessor, equipment trust trustee, or conditional sale vendor under any conditional sale agreement, equipment trust agreement, or lease under section 77(j) of the Bankruptcy Act (11 U.S.C. 205(j)). A profitable railroad operating in the region, the Corporation or a subsidiary thereof, or a State or responsible person, to whom such a conveyance is made as assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease. Such an assignment or conveyance to, and such an assumption of liability by, such a profitable railroad, Corporation, subsidiary, State, or responsible person shall not be deemed a breach, an event of default, or a violation of any covenant of any such conditional sale agreement, equipment trust agreement, or lease so assigned or conveyed, notwithstanding any provisions of any such agreement or lease.

(4) Notwithstanding anything to the contrary contained in this Act, if a railroad in reorganization has leased rail properties from a lessor that is neither a railroad nor controlled by or affiliated with a railroad, and such lease has been approved by the lessee railroad's reorganization court prior to the date of enactment of this Act, con-

veyance of such lease may only be effected if the Corporation, profitable railroad, State, or responsible person to whom the conveyance is made assumes all future liability under such lease and all of the terms and conditions specified in the lease, including the obligation to pay the specified rent to the non-railroad lessor.

(5) Notwithstanding any covenant, undertaking, condition, or provision of any sort in any lease, agreement, or contract, the conveyance, transfer, assignment, or other disposition of such lease, agreement, or contract or of any interest therein to, or the assumption by, the Corporation or any subsidiary thereof, or a profitable railroad of obligations thereunder, shall not be deemed a breach, an event of default, or a violation of any covenant of such lease, agreement, or contract.

(6) Notwithstanding anything to the contrary contained in this Act or any other provision of law, the special court shall include in its order such further directions as may be necessary to assure (A) that the operation and administration of the employee pension benefit plans described in section 505(a) of this Act shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (B) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 for benefits accruing during such period), except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974, the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 211(h) of this Act in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 211(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

(c) FINDINGS AND DISTRIBUTION.—(1) After the rail properties have been conveyed to the Corporation or any subsidiary thereof,

profitable railroads operating in the region, States, and responsible persons under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation or any subsidiary thereof in exchange for the securities, certificates of value and the other benefits accruing to such railroad as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad), as provided in the final system plan and this Act, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region, State, or responsible person in exchange for compensation and other benefits accruing to such transferor as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) in accordance with the final system plan.

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 77 of the Bankruptcy Act (11 U.S.C. 205), or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization ;

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum ; and

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation or any subsidiary thereof for the sale, lease, or transfer of property subject to an agreement under section 213 or section 215 (a) (1) or (2) of this Act reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

(2) If the special court finds that the terms of one or more exchanges for securities, certificates of value and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad), which has transferred rail properties pursuant to the final system plan, it may—

(A) enter a judgment reallocating the securities and certificates of value in a fair and equitable manner if they have not been fairly allocated among the railroads transferring rail properties to the Corporation or any subsidiary thereof, except that at least

one share of series B preferred stock and one certificate of value shall be allocated to each such railroad; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the securities and certificates of value, order the Corporation to provide for the transfer to the railroad of other securities of the Corporation or certificates of value issued by the Association as designated in the final system plan in such nature and amounts as would make the exchanges fair and equitable; and

(C) enter a judgment against the Corporation if the judgment would not endanger the viability or solvency of the Corporation.

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region, State, or responsible person in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad, State, or responsible person. If the special court finds that the terms of one or more conveyances or exchanges for securities or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess securities, certificates of value, or compensation to the Corporation or a profitable railroad, State, or responsible person so as not to exceed the constitutional minimum standard of fairness and equity. The special court shall also find the amount of the payments, if any, which each profitable railroad has made on behalf of a transferor railroad in reorganization in accordance with section 211(h) of this Act, for which payment the profitable railroad has not been reimbursed, as provided in section 211(h). Notwithstanding any other provision of this paragraph or of paragraph (4), the special court shall order the return to any such profitable railroad from compensation deposited by such profitable railroad pursuant to subsection (a) (2) of this section, of any such amount so found together with interest at the rate provided in section 211(h). In making any finding under this paragraph, the special court shall take into consideration compensable unconstitutional erosion, if any, which it finds to have occurred in the estate of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by such a railroad, during the bankruptcy proceeding with respect to such railroad.

(4) Upon making the findings referred to in this subsection, the special court shall order distribution of the securities, certificates of value, and compensation deposited with it under subsection (a) of this section to the trustee or trustees of each railroad in reorganization in the region and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties, who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads, States, and responsible persons under such subsection.

(5) Whenever the special court, pursuant to section 303(b) (1) of this title, orders the transfer or conveyance of rail properties—

(A) designated under section 206(c) (1) (C) or (D) of this Act, to the Corporation or any subsidiary thereof, the United States shall indemnify the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment

entered against the Corporation, with respect to such properties, under paragraph (2) of this subsection; and

(B) to the National Railroad Passenger Corporation a profitable railroad operating in the region, a State, or any other responsible person (including a governmental entity), the United States shall indemnify such Corporation, railroad, State, or person against any costs or liabilities imposed thereon as the result of any judgment entered against such Corporation, railroad, State, or person under paragraph (3) of this subsection;

plus interest on the amount of such judgment at such rate as is constitutionally required. The United States may, in its discretion, represent the Corporation or the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, in any proceedings before the special court that could result in such a judgment against the Corporation under paragraph (2) of this subsection or against the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, under paragraph (3) of this subsection. The Corporation, the National Railroad Passenger Corporation, any profitable railroad, State, or responsible person, which is represented by the United States of America shall cooperate diligently in whatever manner the United States shall reasonably request of it in connection with such proceedings. Neither the Corporation or its subsidiaries, nor the National Railroad Passenger Corporation, any profitable railroad, State or responsible person, shall be obligated to reimburse the United States for any moneys paid by the United States pursuant to this section.

(6) Whenever the Corporation exercises an option to acquire, or acquires, interests in rail marine freight floating equipment pursuant to the recommendations of the final system plan, and the Corporation thereafter makes such floating equipment available to a profitable railroad operating in the region, a State, or a responsible person (including a government entity), the United States shall indemnify—

(A) the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against it, with respect to such equipment, under paragraph (2) of this subsection; and

(B) such profitable railroad, State, or responsible person against any costs or liabilities imposed thereon as the result of any judgment entered against such profitable railroads, State, or responsible person under paragraph (3) of this subsection, plus interest on the amount of such judgment at such rate as is constitutionally required.

(d) **APPEAL.**—A finding or determination entered pursuant to subsection (c) of this section may be appealed directly to the Supreme Court of the United States in the same manner that an injunction order may be appealed under section 1253 of title 28, United States Code: *Provided*, That such appeal is exclusive and shall be filed in the Supreme Court not more than 20 days after such finding or determination is entered by the special court. The Supreme Court shall dismiss any such appeal within 7 days after the entry of such an appeal if it determines that such an appeal would not be in the interest of an expeditious conclusion of the proceedings and shall grant the highest pri-

ority to the determination of any such appeals which it determines not to dismiss.

(e) **TRANSFER AND OTHER TAXES AND RECORDING FEES.**—All transfers or conveyances of rail properties (whether real, personal, or mixed) which are made under this Act (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to the section 305 of this title or which are made at any time to carry out the purposes of title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or of section 601(d) of this Act) shall be exempt from any taxes, imposts, or levies now or hereafter imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumbrances, or other instruments and, consistent with the designations and applicable principles in the final system plan, to record the release or removal of any pre-existing liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.

TERMINATION AND CONTINUATION OF RAIL SERVICES

SEC. 304. (a) **DISCONTINUANCE.**—(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 303(b) (2) of this title, if—

(A) the final system plan does not designate rail service to be operated over such rail properties;

(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 days after the date of such notice or on the date of any conveyance ordered by the special court pursuant to section 303(b) (1) of this title, whichever is later; and

(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

(2) (A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for joint use or operation of rail properties (under section 206(g) of this Act) or as part of a coordination project (under sections 206(c) and (g) of this Act), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 303(b) (1), if the Commission determines that such rail service on such rail properties is not compensatory and if—

(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding agreement (effective on or before the effective date of such discontinuance) to carry out such arrangement or project;

(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 303(b) (2).

(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus a reasonable return on the value of such rail properties, as determined in accordance with the standards developed pursuant to section 205(d) (6) of this Act.

(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

(D) The Commission may issue such rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

(b) **ABANDONMENT.**—(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a) (1) (C) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of the Interstate Commerce Act, the con-

stitution or law of any State, or the decision of any court of administrative agency of the United States or of any State.

(c) **CONTINUATION OF RAIL SERVICES.**—No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section—

(1) in the case of service and properties referred to in subsections (a) (1) and (b) (1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

(2) if a financially responsible person (including a government entity) offers—

(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties, together with a reasonable return on the value of such properties;

(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2)(A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

(d) **RAIL FREIGHT SERVICE.**—(1) If a rail service continuation payment is offered, pursuant to subsection (c) (2) (A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties. A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled

to receive, from the person offering such payment, the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, as determined by the Office.

(2) The trustees of a railroad in reorganization shall permit rail service to be continued on any rail properties with respect to which a rail service continuation payment operating agreement has been entered into under this subsection. Such trustees shall receive a reasonable return on the values of such properties, as determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 303(b)(1) of this title, the Commission—

(A) shall take such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection; and

(B) shall have authority, in accordance with the provisions of section 1(16)(b) of the Interstate Commerce Act (49 U.S.C. 1(16)(b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been offered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after the date of enactment of the Rail Transportation Improvement Act—

(A) pursuant to this section; or

(B) pursuant to section 402 of this Act or section 17 of the

Urban Mass Transportation Act of 1964 (49 U.S.C. 1613), shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this Act.

(e) RAIL PASSENGER SERVICE.—(1) The Corporation (or a profitable railroad) shall provide rail passenger service for a period of 180 days immediately following the date of conveyance (pursuant to section 303(b)(1) of this title), with respect to any rail properties over which a railroad in reorganization in the region, or a person leased,

operated, or controlled by such a railroad, was providing rail passenger service immediately prior to such date of conveyance. Such service shall be provided on such properties regardless of whether or not such properties are designated in the final system plan as rail properties over which rail service is required to be operated, except with respect to properties over which such service is provided by the National Railroad Passenger Corporation.

(2) If a State (or a local or regional transportation authority) was providing financial assistance to support the operation of rail passenger service, pursuant to a lease or agreement which was in effect immediately prior to the date of conveyance (pursuant to such section 303(b)(1)), the Corporation (or a profitable railroad) shall be bound by the service provisions of such lease or agreement for the duration of the 180-day mandatory operation period specified in paragraph (1) of this subsection. If a State or such an authority was providing financial assistance for the continuation of rail passenger service on rail properties immediately prior to such date of conveyance, it shall provide the same level of financial assistance during such 180-day mandatory operation period. If no such financial assistance was being provided or if no such lease or agreement was in effect immediately prior to such date of conveyance, with respect to any such rail properties, the Corporation (or a profitable railroad) shall provide the same level of rail passenger service, for the duration of such 180-day mandatory operation period, that was provided prior to such date by the applicable railroad. If—

(A) such financial assistance is not provided;

(B) a State (or a local or regional transportation authority) has not, by the end of such 180-day mandatory operation period, offered a rail service continuation payment pursuant to subsection (c)(2)(A) of this section;

(C) an applicable rail service continuation payment pursuant to such subsection (c)(2)(A) is not paid when it is due; or

(D) a payment required under a lease or agreement, pursuant to section 303(b)(2) of this title or subsection (c)(2)(B) of this section, is not paid when it is due,

the Corporation (or, where applicable, the National Railroad Passenger Corporation, a profitable railroad, or the trustee or trustees of a railroad in reorganization in the region) may (i) discontinue such rail passenger service, and (ii) with respect to rail properties not designated for inclusion in the final system plan, abandon such properties pursuant to subsections (a) and (b) of this section.

(3) Nothing in this subsection shall be construed to affect the obligation of the Corporation (or a profitable railroad), or of the trustees of the railroads in reorganization in the region, to provide rail passenger service pursuant to section 303(b)(2) of this title or subsection (c)(2)(B) of this section.

(4) If a State (or a local or regional transportation authority)—
(A) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of the section and under regulations issued by the Office pursuant to section 205(d)(5) of this Act, for the operation of rail passenger service after the 180-day mandatory operation period, and

(B) provides compensation, pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period, the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

(5) (A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transportation authority). The amount of such reimbursement shall be determined pursuant to section 17(a) (1) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d) (5) of this Act.

(B) The Secretary shall reimburse States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies for rail service continuation payments for rail passenger service pursuant to section 17(a) (2) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d) (5) of this Act.

(C) For purposes of the obligation of the Secretary to reimburse the Corporation (or a profitable railroad) or States, local public bodies, and agencies thereof under subparagraphs (A) and (B) of this paragraph, the level of rail passenger service shall be determined on the basis of train miles, car miles, or some other appropriate indicia of scheduled train movements. Programs to correct deferred maintenance on rolling stock, right-of-way, and other facilities which are designed to maintain service, meet on-time performance, and maintain a reasonable degree of passenger comfort (and costs incurred incident thereto) shall be included within the meaning of the term "loss" as used in subparagraph (A) of this paragraph and within the meaning of the term "additional costs" as used in subparagraph (B) of this paragraph and section 17(a) (2) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613(a) (2)).

(D) If a dispute arises with respect to the application of any such regulations, the parties to such dispute may submit such dispute to arbitration by a third party. If the parties are unable to agree upon the selection of an arbitrator, the Chairman of the Commission shall serve in that capacity (except as to matters required to be decided by the Commission, pursuant to section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))).

(6) Notwithstanding any other provision of this subsection, the Corporation is not obligated to provide rail passenger service on rail properties if a State (or a local or regional transportation authority) contracts for such service to be provided on such properties by an operator other than the Corporation, except that the Corporation shall, where appropriate, provide such operator with access to such properties for such purpose.

(f) PURCHASE.—If an offer to purchase is made under subsection (c) (2) (C) of this section, such offer shall be accompanied by an offer of a rail service continuation payment. Such payment shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties of its own account pursuant to an

order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make an offer to purchase or to provide a rail service continuation payment, promptly make available its most recent reports on the physical condition of such property, together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data as are necessary to ascertain the avoidable costs of providing service over such rail properties.

(g) **ABANDONMENT BY CORPORATION.**—After the rail system to be operated by the Corporation or a subsidiary thereof under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation or a subsidiary thereof to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity, if the Corporation or a subsidiary thereof can demonstrate that no State (or local or regional transportation authority), is willing to offer a rail service continuation payment pursuant to subsection (c) of this section. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or any subsidiary or affiliate thereof or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of the Interstate Commerce Act.

(h) **INTERIM ABANDONMENT.**—After the date of enactment of this section and prior to the date of conveyance (pursuant to section 303 (b) (1) of this title), no railroad in reorganization in the region may discontinue service or abandon any line of railroad other than in accordance with the provisions of this Act, unless (1) it is authorized to do so by the Association, and (2) no affected State (or local or regional transportation authority) reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or the decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

(i) **DISPOSITION OF DESIGNATED RAIL PROPERTIES.**—No railroad in reorganization in the region and no person leased, operated or controlled by such a railroad shall sell, transfer, encumber, or otherwise dispose of rail property, or any right or interest therein, designated for transfer to the Corporation or conveyance to a profitable railroad in the final system plan, except pursuant to section 303(b) of this title. The provisions of this subsection shall not apply to any such sale, transfer, encumbrance, or other disposition—

(1) as to which the Association generally or specifically consents in writing;

(2) which, prior to enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, had been specifically approved by a United States district court having jurisdiction over the reorganization of a railroad in reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205); or

(3) following certification to the special court, pursuant to section 209(c) of the Regional Rail Reorganization Act of 1973, of any such rail properties not previously so certified.

(j) EXEMPTION.—(1) (A) Except as provided in subparagraph (B) of this paragraph, no local public body which provides mass transportation services by rail, and which is otherwise subject to the Interstate Commerce Act shall, with respect to the provision of such services, be subject to the Interstate Commerce Act or to rules, regulations, and orders promulgated under such Act, if the interstate fares, or the ability to apply to the Interstate Commerce Commission for changes thereto, of such local public body is subject to approval or disapproval by a Governor of any State in which it provides services.

(B) Any local public body described in subparagraph (A) of this paragraph shall continue to be subject to applicable Federal laws pertaining to (i) safety, (ii) the representation of employees for purposes of collective bargaining, and (iii) employment retirement, annuity, and unemployment systems or any other provision pertaining to dealings between employees and employers.

(2) For purposes of this subsection, the term—

(A) “local public body” has the meaning prescribed for such term in section 12(c) (2) of the Urban Mass Transportation Act (49 U.S.C. 1608(c) (2)) and includes any person or entity which contracts with a local public body to provide transportation services; and

(B) “mass transportation services” means transportation services described in section 12(c) (5) of the Urban Mass Transportation Act (49 U.S.C. 1608(c) (5)) which are provided by rail.

CONTINUING REORGANIZATION; SUPPLEMENTAL TRANSACTIONS

SEC. 305. (a) PROPOSALS.—If the Secretary or the Association determines that, as part of continuing reorganization, further restructuring of rail properties in the region through transactions supplemental to the final system plan would promote the establishment and retention of a financially self-sustaining rail service system in the region adequate to meet the needs of the region, the Secretary or the Association, as the case may be, may develop proposals for such supplemental transactions as are necessary or appropriate to implement the needed restructuring. Transfers of rail properties included in proposals developed by the Association shall be limited to (1) rail properties which would have qualified for designation under section 206(c) (1) (A) of this Act but which were not transferred or conveyed under the final system plan, and which the Association finds to be essential to the efficient operations of the Corporation, and (2) transfers, consistent with the final system plan, of rail properties from the Corporation to a subsidiary thereof. Each proposal (other than a proposal developed by the Association) shall be submitted in writing to the Association and shall state and describe any transactions proposed, the rail properties involved, the parties to such transactions, the financial and other terms of such transactions, the purposes of the Act or the goals of the final system plan intended to be effectuated by such transactions, and such other information incidental thereto as the Association may prescribe. Within 10 days after receipt of a proposal developed by the Secretary, and upon the development of a proposal

developed by the Association, the Association shall publish a summary of such proposal in the Federal Register, and shall afford interested persons (including the Corporation when property is to be transferred to or from the Corporation) an opportunity to comment thereon.

(b) **EVALUATION BY ASSOCIATION.**—The Association shall analyze each proposal containing one or more supplemental transactions, taking into account the comments of interested persons and statements and exhibits submitted at any public hearings which may have been held. The Association shall, within 120 days after the publication of a summary thereof under subsection (a) of this section, publish in the Federal Register a report evaluating such proposal. Such evaluation shall state whether the supplemental transactions contained in such proposal, considered in their entirety, are (1) in the public interest and consistent with the purposes of this Act and the goals of the final system plan, and (2) fair and equitable. If the Corporation opposes, or seeks modification of, any such proposed transfer, its written comments shall be given due consideration by the Association and shall be published as part of the evaluation. Within 30 days after the Association publishes its report, each proposed transferor or transferee shall notify the Association in writing as to whether any proposed supplemental transaction requiring the transfer of any property from or to such transferor or transferee is acceptable to such proposed transferor or transferee. If any such proposed transferor (other than the Corporation) or transferee fails to notify the Association that any proposed supplemental transaction requiring the transfer of any property from such transferor or to such transferee is acceptable to it, no further administrative or judicial proceedings shall be conducted with respect to such proposed supplemental transaction.

(c) **REVIEW BY THE COMMISSION.**—Within 90 days after the publication in the Federal Register of each report referred to in subsection (b) of this section, the Commission shall determine whether the supplemental transactions referred to in the report, considered in their entirety, would be in the public interest and consistent with the purposes of this Act and the goals of the final system plan. In making such determination, the Commission shall give due consideration to the views received by it, within 30 days after the publication of the applicable report, from the Corporation and the Secretary. The Commission may condition its approval of such supplemental transactions on such reasonable terms and conditions as it may deem necessary in the public interest. The approval by the Commission of such supplemental transactions shall not be a prerequisite to the consummation of such transactions, but any determination of the Commission modifying, approving, or disapproving any proposed supplemental transactions shall be given due weight and consideration by the special court in the proceedings prescribed in subsection (d) of this section. If the Commission fails to act within the time period provided in this subsection, the supplemental transactions involved shall be deemed to have been approved by the Commission. The Commission may prescribe such regulations as may be necessary for the administration of this section.

(d) **SPECIAL COURT PROCEEDINGS.**—(1) If the Association has made the determination pursuant to subsection (b) of this section that a proposal for supplemental transactions is in the public interest and consistent with the purposes of this Act and the goals of the

final system plan, and is fair and equitable, the Association shall, within 40 days after the date of the Commission's determination under subsection (c) of this section, or after the expiration of the 90-day period referred to in such subsection (c), whichever is applicable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this Act and the goals of the final system plan, and is fair and equitable, and directing the Corporation to carry out the supplemental transactions specified in such proposal. If the Association has determined, pursuant to subsection (b) of this section that a proposal made by the Secretary is not in the public interest or is not consistent with the purposes of this Act and the goals of the final system plan or is not fair and equitable, the Secretary may, if he determines that such proposal is in the public interest and consistent with the purposes of this Act and the goals of the final system plan and is fair and equitable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this Act and the goals of the final system plan and is fair and equitable, and directing the Corporation to carry out any supplemental transactions specified in such proposal. Such a petition shall be submitted to the special court within 90 days after the date of the Commission's determination under such subsection (c), or after the expiration of the 90-day period referred to in such subsection (c), whichever is applicable.

(2) Within 180 days after the filing of a petition under paragraph (1) of this subsection, the special court shall decide, after a hearing, whether the proposed supplemental transactions contained in such petition, considered in their entirety, are in the public interest and consistent with the purposes of this Act and the goals of the final system plan and are fair and equitable. If the special court determines that such proposed supplemental transactions, considered in their entirety, are in the public interest and consistent with the purposes of this Act and the goals of the final system plan and are fair and equitable, it shall, upon making such determination, issue such orders as may be necessary to direct the Corporation to consummate the transactions. If the special court determines that such proposed supplemental transactions, considered in their entirety, are not in the public interest or not consistent with the purposes of this Act and the goals of the final system plan, or are not fair and equitable, it shall file an opinion stating its conclusion and the reasons therefor. In such event the Association (in the case of a proposal developed by the Association) or the Secretary (in the case of a proposal developed by the Secretary) may, within 120 days after the filing of such opinion, certify to the special court that the terms and conditions of the proposal have been modified consistent with the opinion of the court and are acceptable to each proposed transferor (other than the Corporation) or transferee, and may petition the special court for reconsideration of the proposal as so modified. Within 90 days after the filing of such petition, the special court shall decide, after a hearing, whether the proposal as modified by the certification is in the public interest and consistent with the purposes of this Act and the goals

of the final system plan and is fair and equitable, and shall enter such further orders as are consistent with its determination.

(3) The Corporation is authorized to petition the special court and to be represented regarding any proposed supplemental transaction, contained in a proposal developed by either the Association or the Secretary, which involves the properties of the Corporation.

(4) In proceedings under this subsection, the special court is authorized to exercise the powers of a judge of a United States district court with respect to such proceedings and such powers shall include those of a reorganization court.

(5) Any evaluation by the Association, the Secretary, or the Commission shall not be reviewable in any court except the special court in accordance with the provisions of this section. The supplemental transactions shall not be restrained or enjoined by any court nor shall they be otherwise reviewable by any court other than by the special court to the extent provided in this section.

(6) Notwithstanding any other provision of this Act, no findings, determinations, or proceedings shall be required with respect to any proposal for supplemental transactions other than as expressly set forth in this section.

(7) Any supplemental transaction under this section shall subject the transferor and transferee, in each such supplemental transaction, to the requirements and other provisions of title V of this Act, except that the term "effective date of this Act" contained in such title V shall be applied to such supplemental transaction as if it read "effective date of the supplemental transaction".

(8) A final order or judgment of the special court entering or denying an order pursuant to this subsection shall be reviewable in the same manner as provided in section 209(e) (3) of this Act.

(e) DEFINITION.—As used in this section, the term "fair and equitable" means fair and equitable, in accordance with the standards applicable to the approval of a plan of reorganization (or a step in such plan) under section 77 of the Bankruptcy Act (11 U.S.C. 205) to—

(1) the estates of railroads in reorganization in the region and persons leased, operated, or controlled by such railroads who have conveyed rail properties, under section 303(b) (1) of this title, in exchange for securities of the Corporation, the Association, or profitable railroads and other benefits provided as a consequence of this Act and to any subsequent holders of such securities at the time of the supplemental transaction involved; and

(2) the holders of other securities of the Corporation.

Whenever any property or securities of the Corporation are required to be valued in order to determine whether the terms of a supplemental transaction are fair and equitable, the special court shall give proper recognition to the contributions to the Corporation by all classes of security holders, except that such court shall not assign to the series B preferred stock or the common stock of the Corporation any values added to those securities, by reason of investment by the Association in debentures and series A preferred stock of the Corporation, in excess of any value required by constitutional principles applicable to a reorganization process.

CERTIFICATES OF VALUE

SEC. 306. (a) GENERAL.—On the date when the Corporation is required to deposit securities with the special court pursuant to section 303(a) (1) of this title, the Association shall deposit with the special court the certificates of value of the Association required by this section. The Secretary shall guarantee the payment of all certificates of value delivered in accordance with this title. All guarantees entered by the Secretary under this section shall constitute general obligations of the United States of America for the payment or redemption of which its full faith and credit are pledged. Such guarantees shall be valid and incontestable except as to mutual mistake of fact or as to fraud or material misrepresentation by the holder of such certificates or the transferor of rail properties to which certificates of value of any series so guaranteed are issued.

(b) NUMBER AND DISTRIBUTION.—A separate series of certificates of value shall be issued to each railroad in reorganization in the region and each person leased, operated, or controlled by such a railroad that transfers rail properties to the Corporation or a subsidiary thereof. The number of certificates of value of each series to be deposited pursuant to subsection (a) shall be equal to the number of shares of series B preferred stock of the Corporation which are required to be deposited by the Corporation with the special court, pursuant to section 303(a) (1) of this title in exchange for the rail properties transferred to the Corporation or a subsidiary thereof by such transferor. Certificates of value of the appropriate series shall be distributed by the special court, pursuant to section 303(c) (4) of this title, at the same time to the same transferors, and in the same numbers of units as shares of such series B preferred stock are distributed to such transferor.

(c) REDEMPTION.—(1) Certificates of value, of any series, shall be redeemed by the Association on December 31, 1987, or on such earlier date as the Board of Directors of the Association and the Finance Committee jointly may determine and specify.

(2) Each certificate of value of each series shall be redeemable for an amount, payable in cash, equal to its base value on the redemption date, minus—

(A) the sum of the fair market value of the series B preferred stock applicable to such certificate, the fair market value of the common stock applicable to such certificate, and all cash dividends theretofore paid on any such series B preferred stock and on any such common stock; and

(B) any sums paid to a transferor of rail properties to whom such series of certificates of value was issued resulting from sales or leases by the Corporation of properties transferred to it by such transferor divided by the number of certificates of value distributed to such transferor.

(3) The number of shares of series B preferred stock and common stock applicable to each certificate of value of any series, pursuant to paragraph (2) of this subsection, shall be—

(A) one share of series B preferred stock (adjusted to reflect any stock splits, stock combinations, reclassifications or similar transactions affecting the number of shares of outstanding series B preferred stock following the date of distribution pursuant to section 303(c) (4) of this title); and

(B) the number of shares of common stock determined by dividing the total number of shares of common stock distributed pursuant to section 303(c) (4) of this Act to the transferor receiving such series of certificates of value (adjusted to reflect any stock splits, stock combinations, reclassifications, or similar transactions affecting the number of shares of outstanding common stock following the date of distribution pursuant to section 303(c) (4) of this title) by the total number of certificates of value in the series so distributed to such transferor.

(4) The base value of each certificate of value of any series shall be the value obtained by (A) taking the net liquidation value, as determined by the special court, to which the transferor to whom such series of certificates of value is issued is entitled by virtue of transfers of rail properties, under section 303(b) (1) of this title to the Corporation or a subsidiary thereof; (B) subtracting the value of other benefits provided under this Act, as determined by the special court; (C) adding such amount, if any, as the special court may determine shall be required after taking into consideration compensable unconstitutional erosion, if any, in the estate of a railroad in reorganization, or of a railroad leased, operated, or controlled by such a railroad, which the special court finds to have occurred during any bankruptcy proceeding with respect to such railroad; (D) adding interest from the transfer date to the redemption date to be compounded annually at a rate of 8 percent per annum; and (E) dividing the resulting value by the number of certificates of value of such series distributed to such transferor. In determining such base value, the special court shall give due weight and consideration to the finding of the Association as to the net liquidation value to which each transferor is entitled by virtue of conveyances of rail properties under section 303(b) (1) of this title. For purposes of this paragraph, the term "rail properties" includes all rights with respect to employee benefit plans transferred and assigned to the Corporation pursuant to section 303(b) (6) of this title. Net liquidation value with respect to such rights shall be determined after taking into account all obligations finally transferred or assigned to the Corporation pursuant to such section.

(5) The fair market value of series B preferred stock and of common stock of the Corporation shall be determined in accordance with regulations prescribed by the Association, on the basis of the average price of each such security in the primary established market in which such securities are traded over a period of 120 consecutive trading days ending not less than 20 nor more than 40 trading days preceding the redemption date, or, in the case of a security for which there is not an established trading market, on the basis of the fair market value thereof as determined by the majority vote of three experts in the valuation of securities, one to be selected by the Association, one to be selected by the directors of the Corporation elected by the holders of the security to be valued, and one to be selected by the two first selected.

(d) **AUTHORIZATION FOR APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as are necessary to discharge the obligations of the United States arising under this section.

PROTECTION OF FEDERAL FUNDS

SEC. 307. (a) AUDIT.—(1) The Comptroller General of the United States is authorized to audit the programs, activities, and financial operations of the Corporation for any period during which (A) Federal funds provided pursuant to this Act are being used to finance any portion of its operations, or (B) Federal funds have been invested therein pursuant to this Act. Any such audit may be conducted under such rules and regulations as the Comptroller General may prescribe. The Comptroller General shall report to the Congress at such times and to such extent as he considers necessary to keep the Congress informed on the security of such Federal funds and guarantees and, to the extent appropriate, make recommendations for achieving greater economy, efficiency, and effectiveness in such programs, activities, and operations.

(2) For the purpose of any audit conducted pursuant to subsection (a) of this section, the Comptroller General, or a designated representative of the Comptroller General, shall have access to and the right to examine all books, accounts, records, reports, files, and other papers, items, or property belonging to or in use by the Corporation.

(b) REPORT.—The Association shall prepare and submit an annual report to Congress on the performance of the Corporation in order to keep the Congress informed as to matters which may affect the quality of rail services in the region and which may affect the security of Federal funds referred to in subsection (a) of this section. Each such report shall be submitted within 150 days after the end of the fiscal year of the Corporation. Each such report shall include an evaluation of—

(1) the degree to which the goals of section 206(a) of this Act are being met;

(2) the amounts and causes of deviations, if any, from the financial projections of the final system plan;

(3) the amount of Federal funds made available to the Corporation and a clear description of the uses of such funds;

(4) the projected financial needs of the Corporation;

(5) the projected sources from which such financial needs are likely to be met; and

(6) the ability of the Corporation to become financially self-sustaining without requiring Federal funds in excess of those authorized by section 216(f) of this Act.

TITLE IV—LOCAL RAIL SERVICES

FINDINGS AND PURPOSE

SEC. 401. (a) FINDINGS.—The Congress finds and declares that—

(1) The Nation is facing an energy shortage of acute proportions in the next decade.

(2) Railroads are one of the most energy-efficient modes of transportation for the movement of passengers and freight and cause the least amount of pollution.

(3) Abandonment, termination, or substantial reduction of rail service in any locality will adversely affect the Nation's long-term

and immediate goals with respect to energy conservation and environmental protection.

(4) Under certain circumstances the cost to the taxpayers of rail service continuation subsidies would be less than the cost of abandonment of rail service in terms of lost jobs, energy shortages, and degradation of the environment.

(b) PURPOSE.—Therefore, it is declared to be the purpose of the Congress to authorize the Secretary to maintain a program of rail service continuation subsidies.

RAIL SERVICE CONTINUATION ASSISTANCE

SEC. 402. (a) GENERAL.—(1) The Secretary shall provide financial assistance in accordance with this section to assist in the provision of rail service continuation payments, the acquisition or modernization of rail properties, including the preservation of rights-of-way for future rail service, the construction or improvement of facilities necessary to accommodate the transportation of freight previously moved by rail service, and the cost of operating and maintaining rail service facilities such as yards, shops, docks, or other facilities useful in facilitating and maintaining main line or local rail service. The Federal share of the costs of any such assistance shall be as follows: (A) 100 percent for the 12-month period following the date that rail properties are conveyed pursuant to section 303(b)(1) of this Act; and (B) 90 percent for the succeeding 12-month period.

(2) The Secretary shall, within one year after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, promulgate standards and procedures under which the State share of such cost may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided.

(3) The Secretary, in cooperation with the Secretary of Labor, the Association, and the Commission, shall assist States and local or regional transportation authorities in negotiating initial operating or lease agreements and shall report to the Congress not later than 30 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 on the progress of such negotiations. The Secretary may, with the concurrence of a State, enter directly into operating or lease agreements with railroads designated to provide service under section 304(d) of this Act, and with the trustees of railroads in reorganization in the region over whose rail properties such service will be provided, to assure the uninterrupted continuation of rail service after such date of conveyance. Such agreements may be entered into only during the period when the Federal share is 100 percent. Payments shall be made from the funds to which a State would otherwise be entitled under this section.

(b) ENTITLEMENT.—(1) Each State in the region which is, pursuant to subsection (c) of this section, eligible to receive rail service continuation assistance is entitled to an amount equal to the total amount authorized and appropriated for such purpose multiplied by a fraction whose numerator is the rail mileage in such State which is eligible for rail service continuation assistance under this section and whose denominator is the rail mileage in all of the States in the

region which are eligible for rail service continuation assistance under this section. Notwithstanding the preceding sentence, the entitlement of each State shall not be less than 3 percent of the funds appropriated. Not more than 5 percent of a State's entitlement may be used for rail planning activities. For purposes of this subsection, rail mileage shall be measured by the Secretary in consultation with the Interstate Commerce Commission. Any portion of the entitlement of any State which is withheld, in accordance with this section, and any such sums which are not used or committed by a State shall be reallocated immediately, to the extent practicable, among the other States in accordance with the formula set forth in this subsection. In addition to amounts provided pursuant to such rail mileage formula, funds shall also be made available to each State for the cost of operating and maintaining rail service facilities such as yards, shops, and docks which are useful in facilitating and maintaining mainline or local rail services and which are contained in each State's rail plan, except that (A) any such assistance shall extend for a period of only 12 months following the date rail properties are conveyed under section 303(b)(1) of this Act, and (B) no railroad shall be required to operate such facilities. With respect to the limitation on assistance for rail service facilities under the preceding sentence, the Secretary shall, not later than 90 days prior to the end of such 12-month period, submit a report to the Congress in conjunction with a designated State agency, recommending future action with respect to such facilities.

(2) For a period of not more than 1 year following the date rail properties are conveyed pursuant to section 303(b)(1) of this Act, the Secretary is authorized to provide financial assistance, from the funds to which a State would otherwise be entitled under this section for the continuation of local rail services, to any person determined by the Secretary to be financially responsible who will enter into any operating and lease agreements with railroads designated to provide service under section 304(d) of this Act, regardless of the eligibility of the State, where the applicable rail properties are located, to receive assistance under subsection (c) of this section. In any case in which a State is eligible to receive rail service continuation assistance under subsection (c) of this section, States shall have priority to receive such payments over any other person eligible under this paragraph and no other person eligible under this paragraph shall receive such payments unless his application therefor has been approved by the State agency designated under subsection (c) to administer the State plan.

(c) **ELIGIBILITY.**—(1) A State in the region is eligible to receive financial assistance pursuant to subsection (b) of this section if, in any fiscal year—

(A) the State has established a State plan for rail transportation and local rail services (herein referred to as the "State rail plan") which is administered or coordinated by a designated State agency and such plan includes a suitable process for updating, revising, and amending such plan and provides for the equitable distribution of such financial assistance among State, local, and regional transportation authorities;

(B) the State agency (i) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services, (ii) employs or will employ,

directly or indirectly, sufficient trained and qualified personnel, and (iii) maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

(C) the State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the State; and

(D) the State complies with the regulations of the Secretary issued under this section.

(2) The rail freight services which are eligible for rail service continuation assistance pursuant to this section are—

(A) those rail services of railroads in reorganization in the region, or persons leased, operated, or controlled by any such railroad, which the final system plan does not designate to be continued;

(B) those rail services on rail properties referred to in section 304(a)(2) of this Act;

(C) those rail services in the region which have been, at any time during the 5-year period prior to the date of enactment of this Act, or which, are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or by a local or regional transportation authority, or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested (at any time during the 5-year period prior to the date of enactment of this Act), or invests (subsequent to the date of enactment of this Act), substantial sums for improvement or maintenance of rail service; or

(D) those rail services in the region with respect to which the Commission authorizes the discontinuance of rail services or the abandonment of rail properties, effective on or after the date of enactment of this Act.

(3) The rail freight properties which are eligible to be acquired or modernized with financial assistance pursuant to subsection (b) of this section are those rail properties which are used for services eligible for rail service continuation assistance, pursuant to paragraph (2) of this subsection, including those properties which are identified, in the applicable State rail plan as having potential for future use for rail freight service.

(4) The facilities which are eligible to be constructed or improved with financial assistance pursuant to subsection (b) of this section are those facilities in the region (including intermodal terminals and highways or bridges) which are needed in order to provide rail freight service which will no longer be available because of the discontinuance of rail freight service under section 304 of this Act or other lawful authority. No funds provided under this paragraph may be used to pay the State share of any highway projects under title 23, United States Code.

(5) Rail properties are eligible to be acquired with financial assistance pursuant to subsection (b) of this section if (A) they are to be used for intercity or commuter rail passenger service, and (B) they pertain to a line in the region (other than rail properties designated in accordance with section 206(c)(1)(C) of this Act) which, if so

acquired (i) would enable the National Railroad Passenger Corporation to serve, more efficiently, a route which it operated on November 1, 1975 (ii) would provide intercity rail passenger service designated by the Secretary under title II of the Rail Passenger Service Act, or (iii) would provide such service over a route designated for service pursuant to section 403(c) of the Rail Passenger Service Act (45 U.S.C. 563(c)).

(d) **REGULATIONS.**—Within 90 days after the date of enactment of this Act, the Secretary shall issue, and may from time to time amend, regulations with respect to the provision of financial assistance under this title.

(e) **PAYMENT.**—The Secretary shall pay to each eligible State in the region an amount equal to its entitlement under subsection (b) of this section.

(f) **RECORDS, AUDIT, AND EXAMINATION.**—(1) Each recipient of financial assistance under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in such paragraph.

(g) **WITHHOLDING.**—If the Secretary, after reasonable notice and an opportunity for a hearing to any State agency, finds that a State is not eligible for financial assistance under subsections (c) and (d) of this section, payment to such State shall not be made until there is no longer any failure to comply.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary to carry out the purposes of this section an amount not to exceed \$180,000,000 without fiscal year limitation. Such sums as are appropriated shall remain available until expended.

(i) **DEFINITION.**—As used in this section, the term “trail service continuation assistance” includes expenditures made by a State (or a local or regional transportation authority), at any time during a 1-year period preceding the date of enactment of this Act, or subsequent to the date of enactment of this Act, for acquisition, rehabilitation, or modernization of rail facilities on which rail freight services would have been curtailed or abandoned but for such expenditures.

ACQUISITION AND MODERNIZATION LOANS

SEC. 403. (a) ACQUISITION.—If a State which is eligible for assistance under section 402(c) of this title or a local or regional transportation authority has made an offer to purchase any rail properties

of a railroad pursuant to section 304(c)(2)(C) of this Act or other lawful authority, the Secretary is authorized to direct the Association to provide loans to such State or local or regional transportation authority not to exceed 70 per centum of the purchase price.

(b) MODERNIZATION.—In addition to such acquisition loans, the Secretary is authorized to direct the Association to provide additional assistance not to exceed 70 per centum of the cost of restoring or repairing such rail properties to such condition as will enable safe and efficient rail transportation operations over such rail properties. Such financial assistance may be in the form of a loan or the guarantee of a loan. The Association shall provide such financial assistance as the Secretary may direct under this section and shall adopt regulations describing its procedures for such assistance. Notwithstanding any other provision of this title, a State may expend sums received by it under paragraphs (1) and (2) of section 402(b) of this title for acquisition and modernization pursuant to this section, or for any project designated pursuant to a State rail plan.

TITLE V—EMPLOYEE PROTECTION

DEFINITIONS

SEC. 501. As used in this title unless the context otherwise requires—

(1) “acquiring railroad” means a railroad, except the Corporation or any subsidiary thereof, which seeks to acquire or has acquired, pursuant to the provisions of this Act, all or a part of the rail properties of one or more of the railroads in reorganization, the Corporation or any subsidiary thereof, or a profitable railroad;

(2) “employee of a railroad in reorganization” means a person who, on the effective date of a conveyance of rail properties of a railroad in reorganization to the Corporation or any subsidiary thereof, to the National Railroad Passenger Corporation, to an acquiring railroad, or to a State pursuant to section 208(d)(2) of this Act has an employment relationship with either said railroad in reorganization or any carrier (as defined in parts I and II of the Interstate Commerce Act) which is leased, controlled, or operated by the railroad in reorganization (except a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization), but does not include a president, vice president, treasurer, secretary, comptroller, and any other person who performs functions corresponding to those performed by the foregoing officers;

(3) “protected employee” means any employee of—

(A) an acquiring or selling railroad who is adversely affected by a transaction;

(B) the Corporation who, immediately preceding such employment by the Corporation, was employed by a selling railroad and who is adversely affected by the sale of rail properties to the Corporation pursuant to an offer designated under section 206(c)(2) of this Act;

(C) a railroad in reorganization in the region; and

(D) a railroad who is adversely affected by a supplemental transaction under section 305 of this Act or by a project recommended under section 206(g) of this Act;

who, in any such case, has not reached age 65 on the effective date of this Act;

(4) "class or craft of employees" means a group of employees, recognized and treated as a unit for purposes of collective bargaining, which is represented by a labor organization that has been duly authorized or recognized pursuant to the Railway Labor Act as its representative for purposes of collective bargaining;

(5) "representative of a class or craft of employees" means a labor organization which has been duly authorized or recognized as the collective bargaining representative of a class or craft of employees pursuant to the Railway Labor Act;

(6) "deprived of employment" means the inability of a protected employee to obtain a position by the normal exercise of his seniority rights with the Corporation or any subsidiary thereof after properly electing to accept employment therewith or, the subsequent loss of a position and inability, by the normal exercise of his seniority rights under the applicable collective bargaining agreements, to obtain another position with the Corporation or any subsidiary thereof: *Provided, however,* That provisions in existing collective bargaining agreements of a railroad in reorganization, which do not require a protected employee, in the normal exercise of seniority rights, to make a change in residence, in order to maintain his protection, will be preserved and will also be extended and be applicable to all other protected employees of that same craft or class. It shall not, however, include any deprivation of employment by reason of death, retirement, resignation, dismissal or disciplinary suspension for cause, failure to work due to illness or disability, nor any severance of employment covered by subsections (d) and (e) of section 505 of this title;

(7) "employee adversely affected with respect to his compensation" means a protected employee who suffers a reduction in compensation;

(8) "transaction" means actions taken pursuant to the provisions of this Act, including section 305 thereof, or the results thereof;

(9) "change in residence" means transfer to a work location which is located either (A) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (B) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location:

(10) "selling railroad" means a railroad which sells rail properties pursuant to an offer designated under section 206(c)(2) of this Act; and

(11) replacement operator means—

(A) a State which has acquired all or part of the rail properties of any railroad in reorganization in the region and which intends to replace any class I railroad as the operator of rail service over such rail properties; or

(B) any class I railroad which is designated, by a State which has acquired such rail properties, to replace the State or any other class I railroad as the operator of rail service over such rail properties.

EMPLOYMENT OFFERS

SEC. 502. (a) **APPLICABLE LAW.**—The Corporation and, where applicable, the Association shall be subject to the provisions of the Railway Labor Act and shall be considered employers for purposes of the Railroad Retirement Act, Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act. The Corporation, in addition, shall, except as otherwise specifically provided by this Act, be subject to all Federal and State laws and regulations applicable to carriers by railroad. As used in this subsection, the term “where applicable” refers to the relation of the Association, as an employer (A) to employees of the Association who before the date of conveyance, under section 303(b) (1) of this Act, had creditable service under the relevant statute and who were offered and accepted coverage under such statute, and (B) to former employees of railroads in reorganization in the region, after the date of such conveyance.

(b) **MANDATORY OFFER.**—The Corporation shall offer employment, to be effective as of the date of a conveyance or discontinuance of service under the provisions of this Act, to each employee of a railroad in reorganization in the region who has not already accepted an offer of employment by the Association (where applicable), an acquiring railroad, or the Corporation. Such offers of employment to employees represented by labor organizations shall be confined to their same craft and class. The Corporation shall apply to such employees the protective provisions of this title.

(c) **ASSOCIATION.**—After the transfer of rail properties pursuant to section 303, the Association, in employing any additional employees, shall give priority consideration to employees of a railroad in reorganization and the provisions of this title shall apply to any such employees employed by the Association as if they were employees of the Corporation.

ASSIGNMENT OF WORK

SEC. 503. The Corporation shall have the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties acquired pursuant to the provisions of this Act from a railroad in reorganization to any location, facility, or position on its system provided it does not remove said work from coverage of a collective-bargaining agreement and does not infringe upon the existing classification of work rights of any craft or class of employees at the location or facility to which said work is assigned, allocated, reassigned, reallocated, or consolidated and shall have the right to transfer to an acquiring railroad the work incident to the rail properties or facilities acquired by said acquiring railroad pursuant to this Act, subject, however, to the provisions of section 508 of this title.

COLLECTIVE-BARGAINING AGREEMENTS

SEC. 504. (a) **INTERIM APPLICATION.**—Until completion of the agreements provided for under subsection (d) of this section, the Corporation shall, as though an original party thereto, assume and apply on the particular lines, properties, or facilities acquired all obligations

under existing collective-bargaining agreements covering all crafts and classes employed thereon, except that the Agreement of May 1936, Washington, D.C. and provisions in other existing job stabilization agreements shall not be applicable to transactions effected pursuant to this Act with respect to which the provisions of section 505 of this title shall be superseding and controlling. During this period, employees of a railroad in reorganization who have seniority on the lines, properties, or facilities acquired by the Corporation pursuant to this Act shall have prior seniority roster rights on such acquired lines, properties, or facilities.

(b) SINGLE IMPLEMENTING AGREEMENT.—On or before the date of the adoption of the final system plan by the Board of Directors of the Association as provided in section 207(c) of this Act, the representatives of the various classes or crafts of the employees of a railroad in reorganization involved in a conveyance pursuant to this Act and representatives of the Corporation shall commence negotiation of a single implementing agreement for each class and craft of employees affected providing (1) the identification of the specific employees of the railroad in reorganization to whom the Corporation offers employment; (2) the procedure by which those employees of the railroad in reorganization may elect to accept employment with the Corporation; (3) the procedure for acceptance of such employees into the Corporation's employment and their assignment to positions on the Corporation's system; (4) the procedure for determining the seniority of such employees in their respective crafts or classes on the Corporation's system which shall, to the extent possible, preserve their prior seniority rights; and (5) the procedure for determining equitable adjustment in rates of comparable positions. If no agreement with respect to the matters referred to in this subsection is reached by the end of 30 days after the commencement of negotiations, the parties shall within an additional 10 days select a neutral referee and, in the event they are unable to agree upon the selection of such referee, then the National Mediation Board shall immediately appoint a referee. After a referee has been designated, a hearing on the dispute shall commence as soon as practicable. Not less than 10 days prior to the effective date of any conveyance pursuant to the provisions of this Act, the referee shall resolve and decide all matters in dispute with respect to the negotiation of said implementing agreement or agreements and shall render a decision which shall be final and binding and shall constitute the implementing agreement or agreements between the parties with respect to the transaction involved. The salary and expenses of the referee shall be paid pursuant to the provisions of the Railway Labor Act.

(c) RELATIONSHIP TO OTHER PROVISIONS.—Notwithstanding failure for any reason to complete implementing agreements provided for in subsection (b) of this section, the Corporation may proceed with a conveyance of properties, facilities, and equipment pursuant to the provisions of this Act and effectuate said transaction: *Provided*. That all protected employees shall be entitled to all of the provisions of such agreements, as finally determined, from the time they are adversely affected as a result of any such conveyance.

(d) NEW COLLECTIVE-BARGAINING AGREEMENTS.—Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this Act, the representatives of the various classes of crafts

of the employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiations of new collective-bargaining agreements for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are employees of the Corporation, which collective-bargaining agreements shall include appropriate provisions concerning rates of pay, rules, and working conditions but shall not include any provisions for job stabilization resulting from any transaction effected pursuant to this Act which may exceed or conflict with those established or prescribed herein.

(e) **LIABILITY FOR EMPLOYEE CLAIMS.**—In all cases of claims by employees, arising under the collective bargaining agreements of the railroads in reorganization in the region, and subject to section 3 of the Railway Labor Act (45 U.S.C. 153), the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier, as the case may be, shall assume responsibility for the processing of any such claims, and payment of those which are sustained or settled on or subsequent to the date of conveyance, under section 303(b)(1) of this Act, and shall be entitled to direct reimbursement from the Association pursuant to section 211(h) of this Act, to the extent that such claims are determined by the Association to be the obligation of a railroad in reorganization in the region. Any liability of an estate of a railroad in reorganization to its employees which is assumed, processed, and paid, pursuant to this subsection, by the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier shall remain the preconveyance obligation of the estate of such railroad for purposes of section 211(h)(1) of this Act. The Corporation, the National Railroad Passenger Corporation, an acquiring carrier, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 211(h) of this Act (other than paragraph (4) (A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid. In those cases in which claims for employees were sustained or settled prior to such date of conveyance, it shall be the obligation of the employees to seek satisfaction against the estate of the railroads in reorganization which were their former employers.

(f) **TRANSFER OF EMPLOYEES TO THE NATIONAL RAILROAD PASSENGER CORPORATION OR ACQUIRING RAILROADS.**—Notwithstanding any otherwise applicable provisions of this title, protected employees to whom the Corporation has made offers of employment may be transferred to the National Railroad Passenger Corporation in accordance with the following procedure:

(1) Not later than 90 days after the date of completion of the transaction required by section 206(c) of this Act, implementing agreement negotiations between representatives of the various crafts or classes of employees associated with the involved properties, the Corporation, and the National Railroad Passenger Corporation shall commence. These negotiations shall—

(A) identify the specific employees of the Corporation to whom the National Railroad Passenger Corporation offers employment;

(B) the procedure by which those employees of the Corporation may elect to accept employment with the National Railroad Passenger Corporation;

(C) the procedure for acceptance of such employees into the National Railroad Passenger Corporation's employment; and

(D) the procedure for determining the seniority of such employees in their respective crafts or classes on the National Railroad Passenger Corporation's system which shall, to the extent possible, preserve their prior seniority rights.

If no agreement regarding the matters referred to in this subsection is reached by the end of 60 days after the date of commencement of negotiations (which shall also be a date which is at least 90 days after the transaction contemplated by section 601(d) of this Act), upon notice of any party, all parties thereto shall within an additional 10 days select a neutral referee. If such parties are unable to agree upon the selection of such a referee, the National Mediation Board shall promptly appoint a referee. Hearings shall commence not later than 30 days after the date of selection or appointment of such referee, and a decision shall be rendered by such referee within 60 days after the date of commencement of the hearings. The referee shall resolve and decide all matters in dispute regarding the negotiation of the implementing agreement or agreements. All parties may participate but the referee shall have the only vote. The referee's decision shall be final and binding and shall constitute the implementing agreement or agreements between the parties. The salary and expenses of the referee shall be paid pursuant to the provision of the Railway Labor Act.

(2) Prior to implementation of an agreement or agreements pursuant to paragraph (1) of this subsection, the representatives of the various crafts or classes of employees designated to be transferred to the National Railroad Passenger Corporation shall meet with representatives of the National Railroad Passenger Corporation for the purposes of negotiating agreements regarding rates of pay, rules, and working conditions. If, 60 days after the date of commencement of such negotiations, no agreement has been reached, the bargaining agreement in existence on the rail properties from which the employees are to be transferred and which is applicable to the craft or class of employees being transferred will apply and such implementing agreement will be put into effect.

(3) An employee of the Corporation who is entitled to protection and who is transferred as a result of an acquisition pursuant to this Act, or as a result of the designation a replacement operator, shall, upon transfer to the National Railroad Passenger Corporation, an acquiring railroad, or a replacement operator, carry with him his protected status. The National Railroad Passenger Corporation, an acquiring railroad, or a replacement operator, as new employers, shall be responsible for payment of protective benefits and shall be entitled to reimbursement pursuant to section 509 of this title.

(4) The National Railroad Passenger Corporation may prior to completion of any of the agreements referred to in this section, offer employment to any noncontract employee. Noncontract employees accepting employment with the National Railroad Passenger Corporation shall carry with them all rights and benefits accorded to them under this title.

(g) **ASSUMPTION OF PERSONAL INJURY CLAIMS.**—All cases or claims by employees or their personal representatives for personal injuries or death against a railroad in reorganization in the region arising prior to the date of conveyance of rail properties, pursuant to section 303 of this Act, shall be assumed by the Corporation or an acquiring railroad, as the case may be. The Corporation or the acquiring railroad shall process and pay any such claims that are sustained or settled, and shall be entitled to direct reimbursement from the Association pursuant to section 211(h) of this Act, to the extent that such claims are determined by the Association to be the obligation of such railroad. Any liability of an estate of a railroad in reorganization which is assumed, processed, and paid, pursuant to this subsection, by the Corporation or an acquiring railroad shall remain the preconveyance obligation of the estate of such railroad for purposes of section 211(h) (1) of this Act. The Corporation, an acquiring railroad, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 211(h) of this Act (other than paragraph (4) (A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid.

EMPLOYEE PROTECTION

SEC. 505. (a) EQUIVALENT POSITION.—A protected employee whose employment is governed by a collective-bargaining agreement will not, except as explicitly provided in this title, during the period in which he is entitled to protection, be placed in a worse position with respect to compensation, fringe benefits, rules, working conditions, and rights and privileges pertaining thereto, including benefits under any employee pension benefit plan in effect on December 1, 1975, other than a plan maintained primarily for the purpose of providing deferred compensation for a select group of management personnel or other highly compensated employees. For purposes of protecting employee pension benefits under this title, the term "protected employee whose employment is governed by a collective-bargaining agreement" includes any beneficiary of, and any participant in, such plan, including noncontract employees. The protected benefits of such beneficiary or participant, accrued as of the date of conveyance, may be limited to the amount guaranteed under terminated plans pursuant to title IV of the Employee Retirement Income Security Act of 1974. Pension benefits shall not be paid to any beneficiary of a terminated plan whose benefits are guaranteed by such Act.

(b) **MONTHLY DISPLACEMENT ALLOWANCE.**—A protected employee, who has been deprived of employment or adversely affected with respect to his compensation shall be entitled to a monthly displacement allowance computed as follows:

(1) Said allowance shall be determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the 12 full calendar months immediately preceding January 1, 1975, or in the case of a supplementary transaction, the 12 full calendar months immediately preceding the effective date of such transaction in which he performed compensated service more than 50 per centum of each of such months, based upon his normal work schedule, and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for; and, if an employee's compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less any time lost on account of voluntary absences other than vacations, but said protected employee shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of his average monthly time, *Provided, however, That—*

(A) in determining compensation in his current employment the protected employee shall be treated as occupying the position, producing the highest rate of pay to which his qualifications and seniority entitle him under the applicable collective bargaining agreement and which does not require a change in residence;

(B) with respect to a protected employee who has been deprived of his employment, the said monthly displacement allowance shall be reduced by the full amount of any unemployment compensation benefits received by the protected employee and shall be reduced by an amount equivalent to any earnings of said protected employee in any employment subject to the Railroad Retirement Act and 50 per centum of any earnings in any employment not subject to the Railroad Retirement Act;

(C) a protected employee's average monthly compensation shall be adjusted from time to time thereafter to reflect subsequent general wage increases;

(D) should a protected employee's service total less than 12 months in which he performs more than 50 per centum compensated service based upon his normal work schedule in each of said months, his average monthly compensation shall be determined by dividing separately the total compensation received by the employee and the total time for which he was paid by the number of months in which he performed more than 50 per centum compensated service based upon his normal work schedule; and

(E) the monthly displacement allowance provided by this section shall in no event exceed the sum of \$2,500 in any month except that such amount shall be adjusted to reflect subsequent general wage increases.

(2) A protected employee's average monthly compensation under this section shall be based upon the rate of pay applicable to his employment and shall include increases in rates of pay not

in fact paid but which were provided for in national railroad labor agreements generally applicable during the period involved.

(3) If a protected employee who is entitled to a monthly displacement allowance served as an agent or a representative of a class or craft of employees on either a full- or part-time basis in the 12 months immediately preceding January 1, 1975, or the effective date of the supplemental transaction, as the case may be, his monthly displacement allowance shall be computed by taking the average of the average monthly compensation and average monthly time paid for of the protected employees immediately above and below him on the same seniority roster or his own monthly displacement allowance, whichever is greater.

(4) If a noncontract employee exercises seniority rights in a craft or class of employees protected under this Act, then, during the period such seniority is exercised, such noncontract employee shall be entitled to the same protection offered under this Act to employees in the craft or class in which such seniority is exercised. However, in computing the monthly displacement allowance, the last 12 months prior to January 1, 1975, during which such noncontract employee performed service under a collective-bargaining agreement, shall be used. This paragraph shall not apply to any noncontract employee whose noncontract position has been abolished.

(5) An employee and his representative shall be furnished with a protected employee's average monthly compensation and average monthly time paid for, computed in accordance with the terms of this subsection, together with the data upon which such computations are based, within 30 days after the protected employee notifies the Corporation in writing that he has been deprived of employment or adversely affected with respect to his compensation.

(c) DURATION OF DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall continue until the attainment of age 65 by a protected employee with 5 or more years of service on the effective date of this Act and, in the case of a protected employee who has less than 5 years service on such date, shall continue for a period equal to his total prior years of service: *Provided*, That such monthly displacement allowance shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause; and shall be suspended for the period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to him by the exercise of his seniority rights in accordance with the provisions of this section.

(d) TRANSFER.—(1) A protected employee who has been deprived of employment may be required by the Corporation, in inverse seniority order and upon reasonable notice, to transfer to any bona fide vacancy for which he is qualified in his same class or craft of employee on any part of the Corporation's system and shall then be governed by the collective-bargaining agreement applicable on the seniority district to which transferred. If such transfer requires a change in residence, any such protected employee may choose (A) to voluntarily furlough

himself at his home location and have his monthly displacement allowance suspended during the period of voluntary furlough, or (B) to be severed from employment upon payment to him of a separation allowance computed as provided in subsections (e) and (f) of this section, which separation allowance shall be in lieu of all other benefits provided by this title.

(2) Such protected employee shall not be required to transfer to a location requiring a change in residence unless there is a bona fide need for his services at such location. Such bona fide need for services contemplates that the transfer be to a position which has not and cannot be filled by employees who are not required to make a change in residence in the seniority district involved and which, in the absence of this section, would have required the employment of a new employee.

(3) Such protected employee who, at the request of the Corporation, has once accepted and made a transfer to a location requiring a change in residence shall not be required again to so transfer for a period of 3 years.

(4) Transfers to vacancies requiring a change in residence shall be subject to the following:

(A) The vacancy shall be first offered to the junior qualified protected employee deprived of employment in the seniority district where the vacancy exists, and each such employee shall have 20 days to elect one of the options set forth in paragraph (1) of this subsection. If that employee elects not to accept the transfer, it will then be offered in inverse seniority order to the remaining qualified, protected employees deprived of employment on the seniority district, who will each have 20 days to elect one of the options set forth in paragraph (1) of this subsection.

(B) If the vacancy is not filled by the procedure in paragraph (4) (A) of this subsection, the vacancy will then be offered in the inverse order of seniority to the qualified protected employees deprived of employment on the system and each of such employees will be afforded 30 days to elect one of the options set forth in paragraph (1) of this subsection.

(C) The provisions of this paragraph shall not prevent the adoption of other procedures pursuant to an agreement made by the Corporation and representative of the class or craft of employees involved.

(e) **SEPARATION ALLOWANCE.**—A protected employee who is tendered and accepts an offer by the Corporation to resign and sever his employment relationship in consideration of payment to him of a separation allowance, and any protected employee whose employment relationship is severed in accordance with subsection (d) of this section, shall be entitled to receive a lump-sum separation allowance not to exceed \$20,000 in lieu of all other benefits provided by this title. Said lump-sum separation allowance, in the case of a protected employee who had not less than 3 nor more than 5 years of service as of the date of this Act, shall amount to 270 days' pay at the rate of the position last held and, in the case of a protected employee having had 5 or more years' service, shall amount to the number of days' pay indicated below at the rate of the position last held dependent upon the age of the protected employee at the time of such termination of employment:

60 or under.....	360 days' pay
61	300 days' pay
62	240 days' pay
63	180 days' pay
64	120 days' pay

(f) **TERMINATION ALLOWANCE.**—The Corporation may terminate the employment of an employee of a railroad in reorganization who has less than 3 years' service with such railroad, as of the date of enactment of this Act. The Corporation's right to terminate an employee must be exercised within a period of 1 year from the date of conveyance, pursuant to section 303 of this Act. Upon notification to the employee of the Corporation's intent to terminate his services, the employee shall have the option of accepting the termination allowance or of accepting a voluntary furlough without pay. If the employee entitled to receive a lump sum separation allowance accepts such an allowance, the amount shall be determined as follows:

2 to 3 years' service.....	180 days' pay at the rate of the position last held.
1 to 2 years' service.....	90 days' pay at the rate of the position last held.
Less than 1 year's service.....	5 days' pay at the rate of the position last held for each month of service.

(g) **MOVING EXPENSE BENEFITS.**—Any protected employee who is required to make a change of residence as the result of a transaction shall be entitled to the following benefits—

(1) Reimbursement for all expenses of moving his household and other personal effects, for the traveling expense of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss, not to exceed 10 working days. *Provided*, That the Corporation or acquiring railroad shall, to the same extent provided above, assume said expenses for any employee furloughed within 3 years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the Corporation or acquiring railroad within 90 days after the date on which the expenses were incurred.

(2) (A) (i) If the protected employee owns, or is under a contract to purchase, his own home in the locality from which he is required to move and elects to sell said home, he shall be reimbursed for any loss suffered in the sale of his home for less than its fair market value. In each case the fair market value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The Corporation or an acquiring railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person.

(ii) A protected employee may elect to waive the provisions of paragraph (2) (A) (i) of this subsection and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real

estate commission paid to a licensed realtor (not to exceed \$3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(B) If the protected employee holds an unexpired lease on a dwelling occupied by him as his home, he shall be protected from all loss and cost in securing the cancellation of said lease.

(C) No claim for costs or loss shall be paid under the provisions of this paragraph unless the claim is presented to the Corporation or an acquiring railroad within 90 days after such costs or loss are incurred.

(D) Should a controversy arise with respect to the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or his representative, and the Corporation or an acquiring railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the Corporation or acquiring railroad and these two, if unable to agree upon a valuation within 30 days, shall endeavor by argument within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(h) **APPLICATION OF TITLE.**—Should a railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving a protected employee of benefits to which he otherwise would have become entitled under this title, the provisions of this title will apply to such employee. Provisions of this title shall be applied, upon a conveyance or discontinuance of service, to employees who are otherwise entitled to protective benefits and who were placed in furlough status on or after February 26, 1975.

(i) **NONCONTRACT EMPLOYEES.**—Compensation, severance, termination, and moving expense benefits for employees not governed by a collective-bargaining agreement shall be consistent with subsections (b), (c), (e), (f), and (g) of this section and shall be in accordance with the following provisions:

(1) A protected employee, whose employment is not governed by the terms of a collective-bargaining agreement, may be required by the Corporation, upon reasonable notice, to transfer to any position on the Corporation's system. If such transfer re-

quires a change in residence, the employee may either voluntarily suspend his employment at his home location in lieu of protective benefits, or he may sever his employment and receive a benefit computed in accordance with subsection (e) or (f) of this section. These provisions supersede all provisions or conditions in subsection (d) of this section.

(2) If any dispute arises between the Corporation and a non-contract employee regarding the interpretation or application of any provision of this title, the Corporation shall establish a resolution procedure with arbitration as the final step. Such resolution procedure shall be the exclusive means available to the parties for resolving such dispute, and any arbitration decision rendered shall be final and binding on all parties. Either party may request arbitration, and the cost and expenses of such arbitration shall be shared equally by the parties.

(3) Except as otherwise provided in this title, a protected employee whose employment is not governed by the terms of a collective bargaining agreement and who has been deprived of employment shall not, during the period in which he is entitled to protection, be placed in a worse position with respect to any voluntary relief plan benefits or preretirement benefits provided under any life or medical insurance plan, except that the level of benefits to which such an employee is entitled under this paragraph, shall not exceed the level of benefits which is afforded to the Corporation's active noncontract employees of comparable age, position, and level of compensation.

CONTRACTING OUT

SEC. 506. All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment, or facilities acquired pursuant to the provisions of this Act and the maintenance, repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by said Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including employees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term "unable to hire additional employees" as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work.

ARBITRATION

SEC. 507. Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this title, except

section 504(d) and those disputes or controversies provided for in subsection (g)(2)(D) of section 505 and subsection (b) of section 504 which have not been resolved within 90 days, may be submitted by either party to an Adjustment Board for a final and binding decision thereon as provided in section 3 Second, of the Railway Labor Act, in which event the burden of proof on all issues so presented shall be upon the Corporation or, where applicable, the Association.

DUTIES OF ACQUIRING AND SELLING RAILROADS

SEC. 508. (a) ACQUIRING RAILROADS.—(1) An acquiring railroad shall offer such employment, subject to such rules and working conditions, and afford such employment protection to employees of a railroad from which it acquires properties or facilities (including operating rights) pursuant to this Act, and shall afford such protection to its own employees who are adversely affected by such acquisition, as shall be agreed upon between such acquiring railroad and the representatives of such employees prior to such acquisition, except that the protection and benefits (except as to rules and working conditions) provided for protected employees in such agreements shall be the same as those specified in section 505 of this title. Unless and until such agreements are reached, the acquiring railroad shall not enter into purchase agreements pursuant to section 206(d)(4) of this Act. For purposes of this subsection, the National Railroad Passenger Corporation shall be deemed to be an acquiring railroad, with respect to employees described in section 501(3) of this title.

(2) If the National Railroad Passenger Corporation acquires rail properties of a railroad in reorganization in the region, prior to the date of conveyance of rail properties to the Corporation pursuant to section 303(b)(1) of this Act but after the publication of the preliminary system plan, it shall offer such employment and afford such employment protection to employees of a railroad from which it acquires rail properties and shall further protect its own employees who may be adversely affected by such acquisition, as shall be agreed upon between the National Railroad Passenger Corporation and the representatives of such employees prior to such acquisitions. The protection and benefits provided for employees in such agreements shall be the same as those specified in section 505 of this title, and such protection and benefits shall supersede conflicting provisions in any previously applicable job stabilization agreements or agreements implementing such stabilization agreements, and the National Railroad Passenger Corporation shall be reimbursed for expenses incurred as a result of any such acquisition, as provided in section 509 of this title.

(b) SELLING RAILROADS.—A selling railroad shall offer such employment and shall provide such employment protection to each of its employees who are adversely affected by such sale, pursuant to agreements to be entered into between it and the representatives of such employees prior to said sale: *Provided*, That (1) the protection and benefits provided for protected employees in such agreements shall be the same as those specified in section 505 of this title, and (2) unless and until such agreements are reached, the selling railroad shall not enter into selling agreements pursuant to section 206(d) of this Act.

PAYMENT OF BENEFITS

SEC. 509. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title, other than provisions with respect to employee pension benefits, not to exceed the aggregate sum of \$250,000,000, by the Railroad Retirement Board, upon certification to such Board, by the Corporation, the Association (where applicable), replacement operators, and acquiring railroads, of the amounts paid such employees. Such reimbursement shall be made from a separate account maintained in the Treasury of the United States to be known as the Regional Rail Transportation Protective Account. Neither the Regional Rail Transportation Protective Account nor the Corporation nor a replacement operator nor an acquiring railroad shall be charged for any amounts of benefits paid to a protected employee under the provisions of the Railroad Unemployment Insurance Act or any other income protection law or regulation. There is authorized to be appropriated to the Regional Rail Transportation Protective Account annually such sums as may be required to meet the obligations payable hereunder, not to exceed the aggregate sum of \$250,000,000. There is further authorized to be appropriated to the Railroad Retirement Board annually such sums as may be necessary to provide for additional administrative expenses to be incurred by the Board in the performance of its functions under this section.

TITLE VI—MISCELLANEOUS PROVISIONS

RELATIONSHIP TO OTHER LAWS

SEC. 601. (a) ANTITRUST.—(1) Except as specifically provided in paragraph (2) of this subsection, no provision of this Act shall be deemed to convey to any railroad or employee or director thereof any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(2) The antitrust laws are inapplicable with respect to any action taken to formulate or implement the final system plan where such action was in compliance with the requirements of such plan and with respect to any action taken to formulate or implement any supplemental transaction.

(3) As used in this subsection, "antitrust laws" includes the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; and the antitrust laws of any State or subdivision thereof.

(b) COMMERCE, SECURITIES, AND BANKRUPTCY.—(1) The provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) and the Bank-

ruptcy Act (11 U.S.C. 205 et seq.) are inapplicable (A) to actions taken under this Act to formulate and implement the final system plan which such action was in compliance with the requirements of such plan, and (B) to actions taken under this Act to formulate or implement any supplemental transaction.

(2) All securities of the Corporation which are issued to the Association as the initial holder, or which are issued in connection with the transfer to the Corporation or a subsidiary thereof of rail properties under this Act, shall be deemed for all purposes to have been issued subject to and authorized pursuant to section 20a of the Interstate Commerce Act (49 U.S.C. 20a).

(3) The provisions of section 5 of the Securities Act of 1933 (15 U.S.C. 77e), shall not apply to transactions involving the issuance of any security of the Corporation to the Association, transactions involving the issuance of any security of the Corporation that is deposited with the special court pursuant to section 303(a) of this Act, or transactions involving the issuance or distribution of any security of the Corporation, where the terms and conditions of such issuance or distribution are approved by the special court pursuant to section 303(c) of this Act.

(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act (11 U.S.C. 205), with respect to a railroad in reorganization in the region which conveys all or substantially all of its designated rail properties to the Corporation or a subsidiary thereof, or to profitable railroads in the region, pursuant to the final system plan, and the requirement that plans of reorganization be filed with the Commission, shall cease upon the date of such conveyance. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall also so terminate, as of the date of enactment of this paragraph, with respect to any railroad reorganization under such section 77 but not subject to this Act which (1) does not operate any line of railroad, and (2) has transferred all or substantially all of its rail properties to a railroad in reorganization in the region which was subject to this Act prior to the date of enactment of this paragraph. Thereafter, such powers and duties of the Commission shall be vested in the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance. Such court shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77 on such terms as the court deems just and reasonable, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate. This paragraph does not affect any obligation of any carrier by railroad subject to regulation under the Interstate Commerce Act. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall continue in effect only to the extent that the railroad in reorganization continues to operate any line of railroad.

(c) ENVIRONMENT.—The provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to any action taken under authority of this Act before, and including, the conveyance of rail properties ordered by the special court under section 303(b)(1) of this Act, and

shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.

(d) **NORTHEAST CORRIDOR.**—(1) Rail properties designated in accordance with section 206(c) (1) (C) of this Act shall be purchased or leased by the National Railroad Passenger Corporation. The Corporation shall negotiate an appropriate sale or lease agreement with the National Railroad Passenger Corporation for the properties designated for transfer pursuant to section 206(c) (1) (C) of this Act (45 U.S.C. 716(c) (1) (C)), which shall take effect on the date of conveyance of such properties to the Corporation.

(2) Properties acquired by purchase, lease, or otherwise pursuant to this subsection shall be improved in order to meet the goal set forth in section 206(a) (3) of this Act, relating to improved high-speed passenger service, by the earliest practicable date after the date of enactment of this Act.

(3) The Secretary shall begin the necessary engineering studies and improvements upon enactment.

(4) The final system plan shall provide for any necessary coordination with freight or commuter services of use of the facilities designated in section 206(c) (1) (C) of this Act. Such coordination may be effectuated through a single operating entity, designated in the final system plan, or as mutually agreed upon by the interested parties.

(5) Construction or improvements made pursuant to this subsection may be made in consultation with the Corps of Engineers.

(e) **EMERGENCY SERVICE.**—Section 1(16) of the Interstate Commerce Act (49 U.S.C. 1(16)) is amended by inserting “(a)” before the word “Whenever” in the first sentence and adding the following new paragraph:

“(b) Whenever any carrier by railroad is unable to transport the traffic offered it because—

“(1) its cash position makes its continuing operation impossible;

“(2) it has been ordered to discontinue any service by a court;

or

“(3) it has abandoned service without obtaining a certificate from the Commission pursuant to this section;

the Commission may, upon the same procedure as provided in paragraph (15) of this section, make such just and reasonable directions with respect to the handling, routing, and movement of the traffic available to such carrier and its distribution over such carrier's lines, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people subject to the following conditions:

“(A) Such direction shall be effective for no longer than 60 days unless extended by the Commission for cause shown for an additional designated period not to exceed 180 days.

“(B) No such directions shall be issued that would cause a carrier to operate in violation of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421) or that would substantially impair the ability of the carrier so directed to serve adequately its own patrons or to meet its outstanding common carrier obligations.

“(C) The directed carrier shall not, by reason of such Commission

direction, be deemed to have assumed or to become responsible for the debts of the other carrier.

“(D) The directed carrier shall hire employees of the other carrier to the extent such employees had previously performed the directed service for the other carrier, and, as to such employees as shall be so hired, the directed carrier shall be deemed to have assumed all existing employment obligations and practices of the other carrier relating thereto, including, but not limited to, agreements governing rate of pay, rules and working conditions, and all employee protective conditions commencing with and for the duration of the direction.

“(E) Any order of the Commission entered pursuant to this paragraph shall provide that if, for the period of its effectiveness, the cost, as hereinafter defined, of handling, routing, and moving the traffic of another carrier over the other carrier's lines of road shall exceed the direct revenues therefor, then upon request, payment shall be made to the directed carrier, in the manner hereinafter provided and within 90 days after expiration of such order, of a sum equal to the amount by which such cost has exceeded said revenues. The term “cost” shall mean those expenditures made or incurred in or attributable to the operations as directed, including the rental or lease of necessary equipment, plus an appropriate allocation of common expenses, overheads, and a reasonable profit. Such cost shall be then currently recorded by the carrier or carriers in such manner and on such forms as by general order may be prescribed by the Commission and shall be submitted to and subject to audit by the Commission. The Commission shall certify promptly to the Secretary of the Treasury the amount of payment to be made to said carrier or carriers under the provisions of this paragraph. Payments required to be made to a carrier under the provisions of this paragraph shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purposes of carrying out the provisions hereof.”.

ANNUAL EVALUATION BY THE SECRETARY

SEC. 602. As part of his annual report each year, the Secretary shall transmit to Congress each year a comprehensive report on the effectiveness of the Association and the Corporation in implementing the purposes of this Act, together with any recommendations for additional legislative or other action.

FREIGHT RATES FOR RECYCLABLES

SEC. 603. The Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act (49 U.S.C. 1 et seq.) which will eliminate discrimination against the shipment of recyclable materials in rate structures and in other Commission practices which such discrimination exists.

SEPARABILITY

SEC. 604. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

TAX PAYMENTS TO STATES

SEC. 605. (a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than \$10,000 for each such violation.



**RAILROAD REVITALIZATION AND REGULATORY
REFORM ACT OF 1976**

THEORY OF A WELL-KNOWN GROUP
- 20 -

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

(as amended through 1976)

AN ACT To improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections according to the following table of contents, may be cited as the “Railroad Revitalization and Regulatory Reform Act of 1976”:

TABLE OF CONTENTS

TITLE I—GENERAL PROVISIONS

- Sec. 101. Declaration of policy.
- Sec. 102. Definitions.

TITLE II—RAILROAD RATES

- Sec. 201. Expeditious divisions of revenues.
- Sec. 202. Railroad ratemaking.
- Sec. 203. Tariff modifications.
- Sec. 204. Investigation of discriminatory freight rates for the transportation of recyclable or recycled materials.
- Sec. 205. Adequate revenue levels.
- Sec. 206. Rate incentives for capital investment.
- Sec. 207. Exemptions from Interstate Commerce Act.
- Sec. 208. Rate bureaus.
- Sec. 209. Filing procedures.
- Sec. 210. Intrastate railroad rate proceedings.
- Sec. 211. Demurrage charges.
- Sec. 212. Car service compensation and practices.

TITLE III—REFORM OF THE INTERSTATE COMMERCE COMMISSION

- Sec. 301. Access to information by congressional committees.
- Sec. 302. Effective date of orders of the Commission.
- Sec. 303. Commission hearing and appellate procedure.
- Sec. 304. Office of Rail Public Counsel.
- Sec. 305. Reform of rules of practice before the Commission.
- Sec. 306. Prohibiting discriminatory tax treatment of transportation property.
- Sec. 307. Uniform cost and revenue accounting system.
- Sec. 308. Securities.
- Sec. 309. Rail Services Planning Office.
- Sec. 310. Equitable distribution of cars for unit train service.
- Sec. 311. Appropriations request.
- Sec. 312. Law revision.

TITLE IV—MERGERS AND CONSOLIDATIONS

- Sec. 401. Responsibilities of the Secretary.
- Sec. 402. Merger procedure.
- Sec. 403. Expedited railroad merger procedure.

TABLE OF CONTENTS—Continued

TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT
FINANCING

- Sec. 501. Definitions.
- Sec. 502. The Rail Fund.
- Sec. 503. Classification and designation of rail lines.
- Sec. 504. Capital needs study.
- Sec. 505. Rehabilitation and improvement financing.
- Sec. 506. Redeemable preference shares.
- Sec. 507. Fund anticipation notes.
- Sec. 508. Fund bonds.
- Sec. 509. Authorizations
- Sec. 510. Exemption.
- Sec. 511. Guarantee of obligations.
- Sec. 512. Issuance of notes or obligations.
- Sec. 513. Default on guaranteed obligations.
- Sec. 514. Audit of transactions.
- Sec. 515. Annual report.
- Sec. 516. Employee protection.
- Sec. 517. Intercity rail passenger service.

TITLE VI—IMPLEMENTATION OF THE FINAL SYSTEM PLAN

- Sec. 601. General.
- Sec. 602. Special court.
- Sec. 603. Finance Committee.
- Sec. 604. Obligations of the Association.
- Sec. 605. Debentures and series A preferred stock.
- Sec. 606. Loans.
- Sec. 607. Miscellaneous amendments to title II.
- Sec. 608. Capitalization of the Corporation.
- Sec. 609. Protection of Federal funds.
- Sec. 610. Continuing reorganization; supplemental transactions.
- Sec. 611. Officers and directors of the Corporation.
- Sec. 612. Miscellaneous amendments to title III.
- Sec. 613. Definitions.
- Sec. 614. Employment offers.
- Sec. 615. Collective bargaining agreements.
- Sec. 616. Employee protection.
- Sec. 617. Duties of acquiring and selling railroads.
- Sec. 618. Exemptions.
- Sec. 619. Application of the National Environmental Policy Act.

TITLE VII—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

- Sec. 701. National Railroad Passenger Corporation.
- Sec. 702. Operations Review Panel.
- Sec. 703. Required goals.
- Sec. 704. Funding.
- Sec. 705. Conforming amendments.
- Sec. 706. Facilities with historical or architectural significance.

TITLE VIII—LOCAL RAIL SERVICE CONTINUATION

- Sec. 801. Extension of service.
- Sec. 802. Discontinuance or abandonment.
- Sec. 803. Local rail service assistance.
- Sec. 804. Termination and continuation of rail services.
- Sec. 805. Continuation assistance.
- Sec. 806. Repeal.
- Sec. 807. Rail passenger service.
- Sec. 808. Emergency operating assistance.
- Sec. 809. Conversion of abandoned railroad rights-of-way.
- Sec. 810. Rail bank.

TABLE OF CONTENTS—Continued

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Comprehensive study of rail system.
- Sec. 902. Study of aid to rail transportation.
- Sec. 903. Study of conglomerates.
- Sec. 904. Rail abandonment report.
- Sec. 905. Nondiscrimination.
- Sec. 906. Minority Resource Center.

TITLE I—GENERAL PROVISIONS

DECLARATION OF POLICY

SEC. 101. (a) PURPOSE.—It is the purpose of the Congress in this Act to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy, through—

- (1) ratemaking and regulatory reform;
- (2) the encouragement of efforts to restructure the system on a more economically justified basis, including planning authority in the Secretary of Transportation, an expedited procedure for determining whether merger and consolidation applications are in the public interest, and continuing reorganization authority;
- (3) financing mechanisms that will assure adequate rehabilitation and improvement of facilities and equipment, implementation of the final system plan, and implementation of the Northeast Corridor project;
- (4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;
- (5) auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility; and
- (6) necessary studies.

(b) POLICY.—It is declared to be the policy of the Congress in this Act to—

- (1) balance the needs of carriers, shippers, and the public;
- (2) foster competition among all carriers by railroad and other modes of transportation, to promote more adequate and efficient transportation services, and to increase the attractiveness of investing in railroads and rail-service-related enterprises;
- (3) permit railroads greater freedom to raise or lower rates for rail services in competitive markets;
- (4) promote the establishment of railroad rate structures which are more sensitive to changes in the level of seasonal, regional, and shipper demand;

- (5) promote separate pricing of distinct rail and rail-related services;
- (6) formulate standards and guidelines for determining adequate revenue levels for railroads; and
- (7) modernize and clarify the functions of railroad rate bureaus.

DEFINITIONS

SEC. 102. As used in this Act, unless the context otherwise indicates, the term—

- (1) "Association" means the United States Railway Association;
- (2) "Commission" means the Interstate Commerce Commission;
- (3) "Corporation" means the Consolidated Rail Corporation;
- (4) "final system plan" means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);
- (5) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;
- (6) "Office" means the Rail Services Planning Office of the Commission;
- (7) "railroad" means a common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes the National Railroad Passenger Corporation and the Alaska Railroad; and
- (8) "Secretary" means the Secretary of Transportation or his designated representative.

TITLE II—RAILROAD RATES

EXPEDITIOUS DIVISIONS OF REVENUES

SEC. 201. Section 15(6) of the Interstate Commerce Act (49 U.S.C. 15(6)) is amended by (1) inserting "(a)" immediately after "(6)", and (2) adding at the end thereof the following three new subdivisions:

"(b) Notwithstanding any other provision of law, the Commission shall, within 180 days after the date of enactment of this subdivision, establish, by rule, standards and procedures for the conduct of proceedings for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise) in accordance with the provisions of this paragraph. The Commission shall issue a final order in all such proceedings within 270 days after the submission to the Commission of a case. If the Commission is unable to issue such a final order within such time, it shall issue a report to the Congress setting forth the reasons for such inability.

"(c) All evidentiary proceedings conducted pursuant to this paragraph shall be completed, in a case brought upon a complaint, within 1 year following the filing of the complaint, or, in a case brought upon the Commission's initiative, within 2 years following the commencement of such proceeding, unless the Commission finds that such a proceeding must be extended to permit a fair and expeditious completion of the proceeding. If the Commission is unable to meet any

such time requirement, it shall issue a report to the Congress setting forth the reasons for such inability.

“(d) Whenever a proceeding for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise established) is commenced by the filing of a complaint with the Commission, the complaining carrier or carriers shall (i) attach thereto all of the evidence in support of their position, and (ii) during the course of such proceeding, file only rebuttal or reply evidence unless otherwise directed by order of the Commission. Upon receipt of a notice of intent to file a complaint pursuant to this paragraph, the Commission shall accord, to the party filing such notice, the same right to discovery that would be accorded to a party filing a complaint pursuant to this paragraph.”.

RAILROAD RATEMAKING

SEC. 202. (a) Section 1(5) of the Interstate Commerce Act (49 U.S.C. 1(5)) is amended by inserting “(a)” immediately after “(5)” and by adding at the end thereof the following new sentence: “The provisions of this subdivision shall not apply to common carriers by railroad subject to this part.”.

(b) Section 1(15) of the Interstate Commerce Act (49 U.S.C. 1(5)), as amended by subsection (a) of this section, is further amended by adding at the end thereof the following new subdivisions:

“(b) Each rate for any service rendered or to be rendered in the transportation of persons or property by any common carrier by railroad subject to this part shall be just and reasonable. A rate that is unjust or unreasonable is prohibited and unlawful. No rate which contributes or which would contribute to the going concern value of such a carrier shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate is below a just or reasonable minimum for the service rendered or to be rendered. A rate which equals or exceeds the variable costs (as determined through formulas prescribed by the Commission) of providing a service shall be presumed, unless such presumption is rebutted by clear and convincing evidence, to contribute to the going concern value of the carrier or carriers proposing such rate (hereafter in this paragraph referred to as the ‘proponent carrier’). In determining variable costs, the Commission shall, at the request of the carrier proposing the rate, determine only those costs of the carrier proposing the rate and only those costs of the specific service in question, except where such specific data and cost information is not available. The Commission shall not include in variable cost any expenses which do not vary directly with the level of service provided under the rate in question. Notwithstanding any other provision of this part, no rate shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate exceeds a just or reasonable maximum for the service rendered or to be rendered, unless the Commission has first found that the proponent carrier has market dominance over such service. A finding that a carrier has market dominance over a service shall not create a presumption that the rate or rates for such service exceed a just and reasonable maximum. Nothing in this paragraph shall prohibit a rate increase from a level which reduces the going

concern value of the proponent carrier to a level which contributes to such going concern value and is otherwise just and reasonable. For the purposes of the preceding sentence, a rate increase which does not raise a rate above the incremental costs (as determined through formulas prescribed by the Commission) of rendering the service to which such rate applies shall be presumed to be just and reasonable.

“(c) As used in this part, the terms—

“(i) ‘market dominance’ refers to an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies; and

“(ii) ‘rate’ means any rate or charge for the transportation of persons or property.

“(d) Within 240 days after the date of enactment of this subdivision, the Commission shall establish, by rule, standards and procedures for determining, in accordance with section 15(9) of this part, whether and when a carrier possesses market dominance over a service rendered or to be rendered at a particular rate or rates. Such rules shall be designed to provide for a practical determination without administrative delay. The Commission shall solicit and consider the recommendations of the Attorney General and of the Federal Trade Commission in the course of establishing such rules.”.

(c) Section 15 of the Interstate Commerce Act (49 U.S.C. 15) is amended by redesignating paragraphs (8) through (14) thereof as paragraphs (10) through (16) thereof, respectively, and by inserting therein a new paragraph (9) as follows:

“(9) Following promulgation of standards under section 1 (5) (d) of this part, whenever a rate of a common carrier by railroad subject to this part is challenged as being unreasonably high, the Commission shall, upon complaint or upon its own initiative and within 90 days after the commencement of a proceeding to investigate the lawfulness of such rate, determine whether the carrier proposing such rate has market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate applies. If the Commission finds that such a carrier does not have such market dominance, such finding shall be determinative in all additional or other proceedings under this Act concerning such rate or service, unless (a) such finding is modified or set aside by the Commission, or (b) such finding is set aside by a court of competent jurisdiction. Nothing in this paragraph shall limit the Commission’s power to suspend a rate pursuant to this section, except that if the Commission has found that a carrier does not have such market dominance over the service to which a rate applies, the Commission may not suspend any increase in such rate on the ground that such rate as increased exceeds a just or reasonable maximum for such service, unless the Commission specifically modifies or sets aside its prior determination concerning market dominance over the service to which such rate applies.”.

(d) Section 15 of the Interstate Commerce Act (49 U.S.C. 15) is amended by adding at the end thereof the following two new paragraphs:

“(17) Within 1 year after the date of enactment of this paragraph, the Commission shall establish, by rule, standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, or peak-period demand for rail services. Such standards and

procedures shall be designed to (a) provide sufficient incentive to shippers to reduce peak-period shipments, through rescheduling and advance planning; (b) generate additional revenues for the railroads; and (c) improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by railroads. Following the establishment of such standards and procedures, the Commission shall prepare and submit to the Congress annual reports on the implementation of such rates, including recommendations with respect to the need, if any, for additional legislation to facilitate the establishment of such demand-sensitive rates.

“(18) In order to encourage competition, to promote increased reinvestment by railroads, and to encourage and facilitate increased non-railroad investment in the production of rail services, a carrier by railroad subject to this part may, upon its own initiative or upon the request of any shipper or receiver of freight, file separate rates for distinct rail services. Within 1 year after the date of enactment of this paragraph, the Commission shall establish, by rule, expeditious procedures for permitting publication of separate rates for distinct rail services in order to (a) encourage the pricing of such services in accordance with the carrier’s cash-outlays for such services and the demand therefor, and (b) enable shippers and receivers to evaluate all transportation and related charges and alternatives.”.

(e) Section 15 of the Interstate Commerce Act (49 U.S.C. 15), as amended by this Act, is further amended—

(1) by adding at the end of paragraph (7) thereof the following new sentence: “This paragraph shall not apply to common carriers by railroad subject to this part.”; and

(2) by inserting a new paragraph (8) as follows:

“(8)(a) Whenever a schedule is filed with the Commission by a common carrier by railroad stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may, upon the complaint of an interested party or upon its own initiative, order a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Such hearing shall be completed and a final decision rendered by the Commission not later than 7 months after such rate, fare, charge, classification, regulation, or practice was scheduled to become effective, unless, prior to the expiration of such 7-month period, the Commission reports in writing to the Congress that it is unable to render a decision within such period, together with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the date of the filing of such schedule. If the final decision of the Commission is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately at the expiration of such time period, or shall remain in effect if it has already become effective. Such rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if, upon complaint of an interested party, the Commission finds it to be unlawful.

“(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to the Congress pursuant to subdivision (a), except under the following conditions:

“(i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part or, following promulgation of standards and procedures under section 1(5)(d) of this part, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate increase applies; or

“(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

“(c) The limitations upon the Commission’s power to suspend rate changes set forth in subdivisions (b) (i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only if—

“(i) the rate increase or decrease is filed within 2 years after the date of the enactment of this subdivision;

“(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision;

“(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision within the first 365 days following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1976; and

“(iv) the aggregate of the increases or decreases for any rate filed pursuant to clauses (i) and (ii) of this subdivision within the second 365-day period following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1977.

“(d) The Commission may not suspend a rate under this paragraph unless it appears from specific facts shown by the verified complaint of any person that—

“(i) without suspension the proposed rate change will cause substantial injury to the complainant or the party represented by such complaints; and

“(ii) it is likely that such complainant will prevail on the merits. The burden of proof shall be upon the complainant to establish the matters set forth in clauses (i) and (ii) of this subdivision. Nothing in this paragraph shall be construed as establishing a presumption that any rate increase or decrease in excess of the limits set forth in clauses (iii) or (iv) of subdivision (c) is unlawful or should be suspended.

“(e) If a hearing is initiated under this paragraph with respect to a proposed increased rate, fare, or charge, and if the schedule is not suspended pending such hearing and the decision thereon, the Commission shall require the railroads involved to keep an account of all amounts received because of such increase from the date such rate, fare, or charge became effective until the Commission issues an order or until 7 months after such date, whichever first occurs, or, if the hearings are extended pursuant to subdivision (a), until an order issues or until 10 months elapse, whichever first occurs. The account shall specify by whom and on whose behalf the amounts are paid. In its final order, the Commission shall require the common carrier by railroad to refund to the person on whose behalf the amounts were paid that portion of such increased rate, fare, or charge found to be not justified, plus interest at a rate which is equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. With respect to any proposed decreased rate, fare, or charge which is suspended, if the decrease or any part thereof is ultimately found to be lawful, the common carrier by railroad may refund any part of the portion of such decreased rate, fare, or charge found justified if such carrier makes such a refund available on an equal basis to all shippers who participated in such rate, fare, or charge according to the relative amounts of traffic shipped at such rate, fare, or charge.”

“(f) In any hearing under this section, the burden of proof is on the common carrier by railroad to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. The Commission shall specifically consider, in any such hearing, proof that such proposed changed rate, fare, charge, classification, rule, regulation, or practice will have a significantly adverse effect (in violation of section 2 or 3 of this part) on the competitive posture of shippers or consignees affected thereby. The Commission shall give such hearing and decision preference over all other matters relating to railroads pending before the Commission and shall make its decision at the earliest practicable time.”

(f) Nothing in the amendments made by this section shall be construed—

(1) to modify the application of section 2, 3, or 4 of the Interstate Commerce Act (49 U.S.C. 2, 3, or 4) in determining the lawfulness of any rate or practice;

(2) to make lawful any competitive practice which is unfair, destructive, predatory, or otherwise undermines competition which is necessary in the public interest;

(3) to affect the existing law or the authority of the Commission with respect to rate relationships between ports; or

(4) to affect the authority and responsibility of the Commission to guarantee the equalization of rates within the same port.

(g) The Secretary and the Commission shall separately study the effect of the amendments made by this section on the development of an efficient and financially stable railway system in the United States. Such studies shall include (1) an analysis of the effect of such provisions upon shippers and upon carriers in all modes of transportation, and (2) proposals for further regulatory and legislative changes, if necessary. The Commission shall gather all data relating to such

studies as requested by the Secretary, and shall make such data available to the Secretary. The Secretary and the Commission shall transmit the results of their respective studies to each House of Congress within 20 months after the date of the enactment of this Act.

TARIFF MODIFICATIONS

SEC. 203. (a) Section 15(3) of the Interstate Commerce Act (49 U.S.C. 15(3)) is amended by adding at the end thereof the following new sentence: "With respect to carriers by railroad, in determining whether any such cancellation or proposed cancellation involving any common carrier by railroad is consistent with the public interest, the Commission shall, to the extent applicable, (a) compare the distance traversed and the average transportation time and expense required using the through route, and the distance traversed and the average transportation time and expense required using alternative routes, between the points served by such through route, (b) consider any reduction in energy consumption which may result from such cancellation, and (c) take into account the overall impact of such cancellation on the shippers and carriers who are affected thereby."

(b) Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended by adding at the end thereof the following new paragraph:

"(5) The Commission shall, in any proceeding which involves a proposed increase or decrease in railroad rates, specifically consider allegations that such increase or decrease would change the rate relationship between commodities, ports, points, regions, territories, or other particular descriptions of traffic (whether or not such relationships were previously considered or approved by the Commission) and allegations that such increase or decrease would have a significantly adverse effect on the competitive position of shippers or consignees served by the railroad proposing such increase or decrease. If the Commission finds that such allegations as to change or effect are substantially supported on the record, it shall take such steps as are necessary, either before or after such proposed increase or decrease becomes effective and either within or outside such proceeding, to investigate the lawfulness of such change or effect."

INVESTIGATION OF DISCRIMINATORY FREIGHT RATES FOR THE TRANSPORTATION OF RECYCLABLE OR RECYCLED MATERIALS

SEC. 204. (a) INVESTIGATION.—The Commission, within 12 months after the date of enactment of this Act, and thereafter as appropriate, shall—

(1) conduct an investigation of (A) the rate structure for the transportation, by common carriers by railroad subject to part I of the Interstate Commerce Act, of recyclable or recycled materials and competing virgin natural resource materials, and (B) the manner in which such rate structure has been affected by successive general rate increases approved by the Commission for such common carriers by railroad;

(2) determine, after a public hearing during which the burden of proof shall be upon such common carriers by railroad to show that such rate structure, as affected by rate increases applicable

to the transportation of such competing materials, is just, reasonable, and nondiscriminatory, whether such rate structure is, in whole or in part, unjustly discriminatory or unreasonable;

(3) issue, in all cases in which such transportation rate structure is determined to be, in whole or in part, unjustly discriminatory or unreasonable, orders requiring the removal from such rate structure of such unreasonableness or unjust discrimination; and

(4) report to the President and the Congress, in the annual report of the Commission for each of the 3 years following the date of enactment of this Act, and in such other reports as may be appropriate, all actions commenced or completed under this section to eliminate unreasonable and unjustly discriminatory rates for the transportation of recyclable or recycled materials.

(b) **PARTICIPATION.**—The Administrator of the Environmental Protection Agency shall take such steps as are necessary to assure that the Commission carries out the requirements set forth in subsection (a) of this section as expeditiously as possible. Such Administrator is authorized to participate as a party in the investigation to be commenced by the Commission under such subsection (a).

(c) **RESEARCH, DEVELOPMENT, AND DEMONSTRATION.**—The Secretary, in cooperation with the Commission, shall establish a research, development, and demonstration program to develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods for the purpose of facilitating the competitive and efficient transportation of recyclable or recycled materials by common carriers by railroad subject to part I of the Interstate Commerce Act.

(d) **REVIEW.**—Orders issued by the Commission pursuant to this section shall be subject to judicial review or enforcement in the same manner as other orders issued by the Commission under the Interstate Commerce Act. In all proceedings under this section, the Commission shall comply fully with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) **DEFINITIONS.**—As used in this section, the term—

(1) “recyclable material” means any material which has been collected or recovered from waste for a commercial or industrial use, whether or not such collection or recovery follows end usage as a product; and

(2) “virgin natural resource material” and “virgin material” mean any raw material, including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or other resource which is, or which will become (through the application of technology), a source of raw material for commercial or industrial use.

ADEQUATE REVENUE LEVELS

SEC. 205. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended—

(1) by adding at the end of paragraph (2) and at the end of paragraph (3) the following new sentence: “This paragraph shall not apply to common carriers by railroad subject to this part.”; and

(2) by redesignating paragraph (4) as paragraph (6), and by inserting immediately after paragraph (3) the following new paragraph:

“(4) With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate.”.

RATE INCENTIVES FOR CAPITAL INVESTMENT

SEC. 206. Section 15 of the Interstate Commerce Act (49 U.S.C. 15), as amended by section 202 of this Act, is amended by adding at the end thereof the following new paragraph:

“(19) Notwithstanding any other provision of law, a common carrier by railroad subject to this part may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of \$1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the schedule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule at any time within 180 days thereafter to become effective after 30 days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section 2, 3, or 4 of this part, except that the Commission may at any time order such schedule to be revised to a level equaling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.”.

EXEMPTIONS FROM INTERSTATE COMMERCE ACT

SEC. 207. Paragraph (1) of section 12 of the Interstate Commerce Act (49 U.S.C. 12(1)) is amended by inserting "(a)" immediately before "The Commission" and by adding at the end thereof the following new subdivision:

"(b) Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matters relating to a common carrier by railroad subject to this part, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order. The Commission may, by order, revoke any such exemption whenever it finds, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part to the exempted person, class of persons, services, or transactions, to the extent specified in such order, is necessary to effectuate the national transportation policy declared in this Act and to achieve effective regulation by the Commission, and would serve a useful public purpose."

RATE BUREAUS

SEC. 208. (a) Effective 270 days after the date of enactment of this Act, section 5a of the Interstate Commerce Act (49 U.S.C. 5b) is amended in paragraph (1)(A) thereof by striking out "part I, II, or III" and inserting in lieu thereof "part I (other than a common carrier by railroad), part II, or part III".

(b) Part I of the Interstate Commerce Act is amended by inserting after section 5a thereof a new section 5b as follows:

"AGREEMENTS BETWEEN CARRIERS SUBJECT TO PART I

"SEC. 5b. (1) As used in this section, the term—

"(a) 'affiliate' means any person directly or indirectly controlling, controlled by, or under common control or ownership with, any other person, and as used in this subdivision, the term (i) 'control' has the same meaning as in section 1(3) (b) of this part; and (ii) 'ownership' refers to equity holdings of 5 per centum or more in any business entity;

"(b) 'antitrust laws' means the Act of July 2, 1890, as amended (15 U.S.C. 1, et seq.), the Act of October 15, 1914, as amended (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Act of August 27, 1894, as amended (15 U.S.C. 8 and 9), and chapter 592 of the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a); and

"(c) 'carrier' means any common carrier by railroad subject to part I of this Act.

“(2) Any carrier which is a party to an agreement, between or among two or more carriers, relating to rates, fares, classification, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, shall, under such rules and regulations as the Commission shall prescribe, apply to the Commission for approval of such agreement. The Commission shall, by order, approve any such agreement if approval thereof is not prohibited by paragraph (4) or (5) and if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (8) should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. No such approval shall be granted or continued (a) if any of the terms and conditions which are prescribed under the last sentence of this paragraph are violated or not complied with, or (b) unless the Commission receives a verified written statement (and any written supplement or addendum thereto requested by the Commission) setting forth, with respect to each carrier which is a party to such agreement (i) its name, (ii) the mailing address and telephone number of its headquarter's office, (iii) the names of each of its affiliates, (iv) the names, addresses, and affiliations of each of its officers and directors and of each person who, together with any affiliate, owns or controls any debt, equity, or security interest in it having a value of \$1,000,000 or more, and (v) such other information as the Commission directs to be included. The approval of the Commission shall be granted only upon such terms and conditions as the Commission determines are necessary to enable its approval to be granted in accordance with the standard set forth in this paragraph.

“(3) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission. All such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives. The Commission may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, copy and verify the correctness of information subject to inspection, and take depositions (a) to determine whether any such conference, bureau, committee, or other organization, or any carrier which is a party to any such agreement, has acted or is acting in compliance with the provisions of this section, regulations issued under this section, and the public interest, (b) to determine whether any such organization or carrier is inhibiting an efficient utilization of transportation resources or has established practices which are inconsistent with efficient, flexible, and economic operation, and (c) for such other purposes as the Commission considers appropriate.

“(4) The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction to which section 5 of this part is applicable.

“(5) (a) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration, unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action, without fear of any sanction or retaliatory action, at any time before or after any determination arrived at through such procedure. In no event shall any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section—

“(i) permit participation in agreements with respect to, or any voting on, single-line rates, allowances, or charges established by any carrier;

“(ii) permit any carrier to participate in agreements with respect to, or to vote on, rates, allowances, or charges relating to any particular interline movement, unless such carrier can practically participate in such movement; or

“(iii) permit, provide for, or establish any procedure for joint consideration or any joint action to protest or otherwise seek the suspension of any rate or classification filed by a carrier of the same mode pursuant to section 15(7) of this part where such rate or classification is established by independent action.

As used in clause (i) of this subdivision, a single-line rate, allowance, or charge is one that is proposed by a single carrier applicable only over its own line and as to which the service (exclusive of terminal services provided by switching, drayage, or other terminal carriers or agencies) can be performed by such carrier.

“(b) The limitations set forth in subdivision (a) shall not be applicable to—

“(i) general rate increases or decreases, if the agreements accord the shipping public, under specified procedures, adequate notice of at least 15 days of such proposals and an opportunity to present comments thereon, in writing or otherwise, prior to the filing with the Commission of the tariffs containing such increases or decreases, or

“(ii) broad tariff changes if such changes are of general application or substantially general application throughout a territory or territories within which such changes are to be applicable.

In any proceeding in which it is alleged that a carrier voted or agreed upon a rate, allowance, or charge, in violation of the provisions of this section, the party alleging such violation shall have the burden of showing that such vote or agreement occurred. A showing of parallel behavior is not, by itself, sufficient to satisfy such burden.

“(6) (a) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standards set forth in paragraph (2) and with the public interest, and whether any such terms and conditions are not necessary or whether any additional or modified terms and conditions are necessary for purposes of conformity with such standard. After any such investigation the Commission shall, by order, terminate or modify its approval of such an agreement if

it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

“(b) The Commission shall periodically, but not less than once every 3 years, review each agreement which the Commission has by order approved under this section to determine whether such agreement, or any conference, bureau, committee, or other organization established or continued pursuant to such agreement, still conforms with the standard set forth in paragraph (2) and the public interest, and to evaluate the success and effect upon the consuming public and the national rail freight transportation system of such agreement and organization. The Commission shall report to the President and to the Congress on the results of such reviews, as part of its annual report pursuant to section 21. If the Commission makes a determination that any such agreement or organization is no longer in conformity with such standard, the Commission shall by order terminate or suspend its approval thereof.

“(7) No order shall be entered under this section except after interested parties have been afforded a reasonable opportunity for a hearing.

“(8) Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4) or (5), hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

“(9) Any action of the Commission under this section (a) in approving an agreement, (b) in denying an application for such approval, (c) in terminating or modifying such approval, (d) in prescribing the terms and conditions upon which such approval is to be granted, or (e) in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (8).

“(10) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall periodically prepare an assessment of, and shall report to the Commission on (a) any possible anticompetitive features of (i) any agreement approved or submitted for approval under this section, and (ii) any conferences, bureaus, committees, or other organizations operating under such agreements, and (b) possible ways to eliminate or alleviate any such anticompetitive features, effects, or aspects in a manner that will further the goals of the national transportation policy and this Act. The Commission shall make such reports available to the public.

“(11) Any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall make a final disposition with

respect to any rule, rate, or charge docketed with such organization within 120 days after such proposal is docketed.”.

FILING PROCEDURES

SEC. 209. Section 6(6) of the Interstate Commerce Act (49 U.S.C. 6(6)) is amended by striking out “shall prescribe; and the” and inserting in lieu thereof the following: “shall prescribe. The Commission shall, beginning 2 years after the date of enactment of this sentence, require (a) that all rates shall be incorporated into the individual tariffs of each common carrier by railroad subject to this part or rail ratemaking association within 2 years after the initial publication of the rate, or within 2 years after a change in any rate is approved by the Commission, whichever is later, and (b) that any rate shall be null and void with respect to any such carrier or association which does not so incorporate such rate into its individual tariff. The Commission may, upon good cause shown, extend such period of time. Notice of any such extension and a statement of the reasons therefor shall be promptly transmitted to the Congress. The”.

INTRASTATE RAILROAD RATE PROCEEDINGS

SEC. 210. Section 13 of the Interstate Commerce Act (49 U.S.C. 13) is amended by striking out “: *Provided*, That” and all that follows through “hearing and decision therein” in paragraph (4) thereof, and by adding at the end thereof the following new paragraph:

“(5) The Commission shall have exclusive authority, upon application to it, to determine and prescribe intrastate rates if—

“(a) a carrier by railroad has filed with an appropriate administrative or regulatory body of a State, a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing such a rate, fare, or charge, for the purpose of adjusting such rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and

“(b) the State administrative or regulatory body has not, within 120 days after the date of such filing, acted finally on such change.

Notice of the application to the Commission shall be served on the appropriate State administrative or regulatory body. Upon the filing of such an application, the Commission shall determine and prescribe, according to the standards set forth in paragraph (4) of this section, the rate thereafter to be charged. The provisions of this paragraph shall apply notwithstanding the laws or constitution of any State, or the pendency of any proceeding before any State court or other State authority.”.

DEMURRAGE CHARGES

SEC. 211. Section 1(6) of the Interstate Commerce Act (49 U.S.C. 1(6)) is amended by inserting at the end thereof the following new sentence: “Demurrage charges shall be computed, and rules and regulations relating to such charges shall be established, in such a manner as to fulfill the national needs with respect to (a) freight car

utilization and distribution, and (b) maintenance of an adequate freight car supply available for transportation of property.”.

CAR SERVICE COMPENSATION AND PRACTICES

SEC. 212 (a) Section 1(14)(a) of the Interstate Commerce Act (49 U.S.C. 1(14)(a)) is amended to read as follows:

“(14)(a) It is the intent of the Congress to encourage the purchase, acquisition, and efficient utilization of freight cars. In order to carry out such intent, the Commission may, upon complaint of an interested party or upon its own initiative without complaint, and after notice and an opportunity for a hearing, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including (i) the compensation to be paid for the use of any locomotive, freight car, or other vehicle, (ii) the other terms of any contract, agreement, or arrangement for the use of any locomotive or other vehicle not owned by the carrier by which it is used (and whether or not owned by another carrier, shipper, or third party), and (iii) the penalties or other sanctions for nonobservance of such rules, regulations, or practices. In determining the rates of compensation to be paid for each type of freight car, the Commission shall give consideration to the transportation use of each type of freight car, to the national level of ownership of each such type of freight car, and to other factors affecting the adequacy of the national freight car supply. Such compensation shall be fixed on the basis of the elements of ownership expense involved in owning and maintaining each such type of freight car, including a fair return on the cost of such type of freight car (giving due consideration to current costs of capital, repairs, materials, parts, and labor). Such compensation may be increased by any incentive element which will, in the judgment of the Commission, provide just and reasonable compensation to freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. The Commission shall not make any incentive element applicable to any type of freight car if the Commission finds that the supply of such type of freight car is adequate. The Commission may exempt such incentive element from the compensation to be paid by any carrier or group of carriers if the Commission finds that such an exemption is in the national interest.”.

(b) The Commission shall, within 18 months after the date of enactment of this Act, revise its rules, regulations, and practices with respect to car service, in accordance with the amendment made by subsection (a) of this section.

TITLE III—REFORM OF THE INTERSTATE COMMERCE COMMISSION

ACCESS TO INFORMATION BY CONGRESSIONAL COMMITTEES

SEC. 301. Section 17 of the Interstate Commerce Act (49 U.S.C. 17), as amended by section 303 of this Act, is further amended by inserting therein a new paragraph (15) as follows:

“(15) Whenever the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce of the Senate makes a written request for documents which are in the possession or under the control of the Commission and which relate to any matter involving a common carrier by railroad subject to this part, the Commission shall, within 10 days after the date of receipt of such request, submit such documents (or copies thereof) to such committee, or submit a report in writing to such committee stating the reason why such documents have not been so submitted, and the anticipated date on which they will be submitted. If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition such transfer on the guaranteed return by the transferee of such document to the Commission for purposes of complying with the preceding sentence. This paragraph shall not apply to documents which have been obtained by the Commission from persons subject to regulation by the Commission, and which contain trade secrets or commercial or financial information of a privileged or confidential nature. This paragraph shall not be deemed to restrict any other authority of either House of Congress, or any committee or subcommittee thereof, to obtain documents. For purposes of this paragraph, the term ‘document’ means any book, paper, correspondence, memorandum, or other record, or any copy thereof.”.

EFFECTIVE DATE OF ORDERS OF THE COMMISSION

SEC. 302. Section 15(2) of the Interstate Commerce Act (49 U.S.C. 15(2)), is amended by striking out “, not less than thirty days, and shall”, and inserting in lieu thereof “as the Commission may prescribe. Such orders shall”.

COMMISSION HEARING AND APPELLATE PROCEDURE

SEC. 303. (a) Section 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended by redesignating paragraphs (9) through (12) thereof as paragraphs (10) through (13) thereof, respectively, and by inserting therein the following new paragraph (9):

“(9) (a) Whenever the term ‘hearing’ is used in this part, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

“(b) With respect to any matter involving a common carrier by railroad subject to this part, whenever the Commission assigns the initial disposition to any of such matters before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

“(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

“(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

“(A) specific findings of fact;

“(B) specific and separate conclusions of law;

“(C) a recommended order; and

“(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

“(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be considered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, United States Code, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

“(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision,

order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 120 days after the date on which it grants the application for reconsideration.

“(e) The Commission may, in its discretion, extend any time period set forth in this section for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

“(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

“(i) not less than 7 of the Commissioners, by public vote, agree to such further extension; and

“(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

“(A) a full explanation of the reasons for such further extension;

“(B) the anticipated duration of such further extension;

“(C) the issues involved in the matter before the Commission; and

“(D) the names of personnel of the Commission working on such matter.

“(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

“(i) reopen any proceeding;

“(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

“(iii) reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

“(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

"(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this part, except that the provisions of other sections of this part pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the provisions pertaining to deadlines contained in this paragraph.

"(j) Reports in writing and other written statement (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law."

(b) Section 17 of the Interstate Commerce Act is amended by inserting therein a new paragraph (14) as follows:

"(14) (a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission after the date of enactment of this subdivision shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

"(b) Within 1 year after the date of enactment of this subdivision, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding."

OFFICE OF RAIL PUBLIC COUNSEL

SEC. 304. (a) Part I of the Interstate Commerce Act is amended by redesignating section 27 thereof as section 29 thereof and by inserting after section 26 thereof a new section 27, as follows:

"OFFICE OF RAIL PUBLIC COUNSEL

"SEC. 27. (1) There shall be established, within 60 days after the date of enactment of this section, a new independent office affiliated with the Commission to be known as the Office of Rail Public Counsel.

The Office of Rail Public Counsel shall function continuously pursuant to this section and other applicable Federal laws.

“(2) (a) The Office of Rail Public Counsel shall be administered by a Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate.

“(b) The term of office of the Director shall be 4 years. He shall be responsible for the discharge of the functions and duties of the Office of Rail Public Counsel. He shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

“(3) The Director is authorized to appoint, fix the compensation, and assign the duties of employees of such Office and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code. Each bureau, office, or other entity of the Commission and each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized to provide the Office of Rail Public Counsel with such information and data as it requests. The Director is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions and duties. The Director shall submit a monthly report on the activities of the Office of Rail Public Counsel to the Chairman of the Commission, and the Commission, in its annual report to the Congress, shall evaluate and make recommendations with respect to such Office and its activities, accomplishments, and shortcomings.

“(4) In addition to any other duties and responsibilities prescribed by law, the Office of Rail Public Counsel—

“(a) shall have standing to become a party to any proceeding, formal or informal, which is pending or initiated before the Commission and which involves a common carrier by railroad subject to this part;

“(b) may petition the Commission for the initiation of proceedings on any matter within the jurisdiction of the Commission which involves a common carrier by railroad subject to this part;

“(c) may seek judicial review of any Commission action on any matter involving a common carrier by railroad subject to this part, to the extent such review is authorized by law for any person and on the same basis;

“(d) shall solicit, study, evaluate, and present before the Commission, in any proceeding, formal or informal, the views of those communities and users of rail service affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user of rail service might not otherwise be adequately represented before the Commission in the course of such proceedings; and

“(e) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect rail transportation matters subject to the juris-

diction of the Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical rail transportation services.

In the performance of its duties under this paragraph, the Office of Rail Public Counsel shall assist the Commission in the development of a public interest record in proceedings before the Commission.

"(5) The budget requests and budget estimates of the Office of Rail Public Counsel shall be submitted concurrently to the Congress and to the President.

"(6) There are authorized to be appropriated to the Office of Rail Public Counsel for the purpose of carrying out the provisions of this section not to exceed \$500,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal year transition period ending September 30, 1976, and not to exceed \$2,000,000 for the fiscal year ending September 30, 1977."

(b) Section 13 of the Interstate Commerce Act (49 U.S.C. 13), as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(6) (a) Whenever, pursuant to section 553(e) of title 5, United States Code, an interested person (including a government entity) petitions the Commission for the commencement of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation relating to common carriers by railroads under this Act, the Commission shall grant or deny such petition within 120 days after the date of receipt of such petition. If the Commission grants such a petition, it shall commence an appropriate proceeding as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

"(b) If the Commission denies a petition under subdivision (a) (or if it fails to act thereon within the 120-day period established by such subdivision), the petitioner may commence a civil action in an appropriate court of appeals of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate, within 60 days after the date of expiration of such 120-day period.

"(c) If the petitioner, in an action commenced under subdivision (b), demonstrates to the satisfaction of the court, by a preponderance of the evidence in the record before the Commission or, in an action based on a petition on which the Commission failed to act, in a new proceeding before such court, that the action requested in such petition to the Commission is necessary and that the failure of the Commission to take such action will result in the continuation of practices which are not consistent with the public interest or in accordance with this Act, such court shall order the Commission to initiate such action.

"(d) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the initiation of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation under this Act.

"(e) As used in this paragraph, the term 'Commission' includes any division, individual Commissioner, administrative law judge, employee board, or any other person authorized to act on behalf of the Commission in any part of the proceeding for the issuance, amend-

ment, or repeal of any order, rule, or regulation under this Act relating to common carriers by railroad.”.

REFORM OF RULES OF PRACTICE BEFORE THE COMMISSION

SEC. 305. (a) Within 360 days after the date of enactment of this Act, the Commission shall study, develop, and submit to the Congress an initial proposal setting forth rules of practice under which the Commission proposes to conduct all adjudicatory and rulemaking proceedings with respect to any matter involving a common carrier by railroad subject to this part. Such rules of practice before the Commission shall be consistent with existing law, shall take into consideration the varying nature of proceedings before the Commission, and shall include—

(1) specific time limits upon the filing and disposition of all complaints, applications, petitions, pleadings, motions, appeals, and rulemaking proceedings before an administrative law judge, individual Commissioner, review board, division, or panel of the Commission, or the full Commission;

(2) specific methods of taking testimony, receiving evidence, hearing cross-examination, and the modification of such procedures so as to facilitate the timely execution of the functions of the Commission;

(3) utilization of additional administrative law judges or the assignment of employees of the Office, in complex adjudicatory or rulemaking proceedings, so as to facilitate proper focus and timely resolution of the issues within the required time limits; and

(4) specific remedies in any case of failure to observe required time limits.

(b) Within 420 days after the date of enactment of this Act, the Administrative Conference of the United States shall submit to the Congress and to the Commission its comments on the rules of practice before the Commission proposed pursuant to subsection (a) of this section, together with such recommendations as it considers appropriate.

(c) Within 30 days after the receipt of comments submitted pursuant to subsection (b) of this section, the Commission shall consider such comments and shall submit to the Congress a final proposal setting forth the rules of practice before the Commission with respect to matters involving common carriers by railroad. Such rules of practice shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of submission of such final proposal, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such final proposal. If no resolution is adopted as provided in the preceding sentence, the Commission shall adopt such proposed rules of practice. For purposes of this subsection, continuity of session of the Congress is broken only by an adjournment *sine die*, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded from the computation of the 60-day period.

(d) If either the Senate or the House of Representatives passes a resolution of disapproval under subsection (c) of this section, the

Commission shall develop a revised proposal setting forth the rules of practice before the Commission pursuant to this section. Within 60 days after the date of such disapproval, each such revised proposal shall be submitted to the Congress by the Commission for review pursuant to such subsection (c).

(e) The Commission shall periodically, but not less than once every 3 years, review the rules of practice adopted pursuant to subsection (c) of this section, and shall revise such rules as it considers necessary.

PROHIBITING DISCRIMINATORY TAX TREATMENT OF TRANSPORTATION PROPERTY

SEC. 306. Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), as amended by this Act, is further amended by inserting therein a new section 28, as follows:

"SEC. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

"(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

"(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

"(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

"(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

"(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

"(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

"(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

"(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to trans-

portation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

“(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

“(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

“(3) As used in this section, the term—

“(a) ‘assessment’ means valuation for purposes of a property tax levied by any taxing district;

“(b) ‘assessment jurisdiction’ means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

“(c) ‘commercial and industrial property’ or ‘all other commercial and industrial property’ means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

“(d) ‘transportation property’ means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation.”.

UNIFORM COST AND REVENUE ACCOUNTING SYSTEM

SEC. 307. Paragraph (3) of section 20 of the Interstate Commerce Act (49 U.S.C. 20(3)) is amended to read as follows:

“(3) (a) The Commission shall, not later than June 30, 1977, issue regulations and procedures prescribing a uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this part. Such regulations and procedures shall become effective not later than January 1, 1978. Before promulgating such regulations and procedures, the Commission shall consult with and

solicit the views of other agencies and departments of the Federal Government, representatives of carriers, shippers, and their employees and the general public.

“(b) In order to assure that the most accurate cost and revenue data can be obtained with respect to light density lines, main line operations, factors relevant in establishing fair and reasonable rates, and other regulatory areas of responsibility, the Commission shall identify and define the following items as they pertain to each facet of rail operations:

“(i) operating and nonoperating revenue accounts;

“(ii) direct cost accounts for determining fixed and variable cost for materials, labor, and overhead components of operating expenses and the assignment of such costs to various functions, services, or activities, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services), and general and administrative expenses; and

“(iii) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of such costs to various functions, services, or activities.

“(c) The accounting system established pursuant to this paragraph shall be in accordance with generally accepted accounting principles uniformly applied to all common carriers by railroad subject to this part, and all reports shall include any disclosure considered appropriate under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. The Commission shall, notwithstanding any other provision of this section, to the extent possible, devise the system of accounts to be cost effective, nonduplicative, and compatible with the present and desired managerial and responsibility accounting requirements of the carriers, and to give due consideration to appropriate economic principles. The Commission should attempt, to the extent possible, to require that such data be reported or otherwise disclosed only for essential regulatory purposes, including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

“(d) In order that the accounting system established pursuant to this paragraph continue to conform to generally accepted accounting principles, compatible with the managerial responsibility accounting requirements of carriers, and in compliance with other objectives set forth in this section, the Commission shall periodically, but not less than once every 5 years, review such accounting system and revise it as necessary.

“(e) There are authorized to be appropriated to the Commission for purposes of carrying out the provisions of this paragraph such sums as may be necessary, not to exceed \$1,000,000, to be available for—

“(i) procuring temporary and intermittent services as authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed \$250 per day plus expenses; and

“(ii) entering into contracts or cooperative agreements with any public agency or instrumentality or with any person, firm,

association, corporation, or institution, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).”.

SECURITIES

SEC. 308. (a) (1) Paragraph (6) of section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a) (6)) is amended to read as follows:

“(6) Any security issued by a motor carrier the issuance of which is subject to the provisions of section 214 of the Interstate Commerce Act, or any interest in a railroad equipment trust. For purposes of this paragraph ‘interest in a railroad equipment trust’ means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;”.

(2) The second sentence of section 19(a) of such Act (15 U.S.C. 77s(a)) is amended by striking out “; but insofar as they relate to any common carrier subject to the provisions of section 20 of the Interstate Commerce Act, as amended, the rules and regulations of the Commission with respect to accounts shall not be inconsistent with the requirements imposed by the Interstate Commerce Commission under authority of such section 20”.

(3) Section 214 of the Interstate Commerce Act (49 U.S.C. 314) is amended by striking out “That the exemption” and all that follows through “*And provided further,*”.

(b) Section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)) is amended by striking out “, and, in the case of carriers subject to the provisions of section 20 of the Interstate Commerce Act” and all that follows in such subsection, and inserting in lieu thereof “(except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).”.

(c) Paragraph (7) of section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c) (7)) is amended to read as follows:

“(7) Any company (A) which is subject to regulation under section 214 of the Interstate Commerce Act, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 214 of the Interstate Commerce Act.”.

(d) (1) The amendments made by subsection (a) of this section shall take effect on the 60th day after the date of enactment of this Act, but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day.

(2) The amendment made by subsection (b) of this section shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act.

(3) The amendment made by subsection (c) of this section shall take effect on the 60th day after the date of enactment of this Act.

RAIL SERVICES PLANNING OFFICE

SEC. 309. Section 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) is amended to read as follows:

"RAIL SERVICES PLANNING OFFICE

"SEC. 205. (a) ESTABLISHMENT.—The Rail Services Planning Office is established as an office in the Commission. The Office shall function continuously pursuant to the provisions of this Act, and shall be administered by a director.

"(b) DIRECTOR.—The Director of the Office shall be appointed for a term of 6 years by the Chairman of the Commission with the concurrence of 5 members of the Commission. He shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule, pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Director of the Office shall administer and be responsible for the discharge of the functions and duties of the Office from the date he takes office unless removed for cause by the Commission.

"(c) POWERS.—The Director of the Office is subject to the direction of, and shall report to, such member of the Commission as the Chairman thereof shall designate. The Chairman may designate himself as that member. Such Director is authorized, with the concurrence of such member or (in case of disagreement) the Chairman of the Commission, to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Office with any person (including a government entity). Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized, and shall give careful consideration to a request, to furnish to the Director of the Office, upon written request, on a reimbursable basis or otherwise, such assistance as the Director deems necessary to carry out the functions and duties of the Office. Such assistance includes transfer of personnel with their consent and without prejudice to their position and rating.

"(d) DUTIES.—In addition to its duties and responsibilities under other provisions of this Act and under the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall—

"(1) assist the Commission in studying and evaluating any proposal, submitted to the Commission pursuant to section 5(2) or (3) of the Interstate Commerce Act (49 U.S.C. 5 (2) or (3)), for a merger, consolidation, unification or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to part I of such Act;

"(2) assist the Commission in developing, with respect to economic regulation of transportation, policies which are likely to result in a more competitive, energy-efficient, and coordinated transportation system which utilizes each mode of transportation to its maximum advantage to meet the transportation service needs of the Nation;

"(3) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation subsidies to maintain in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies, with such criteria to include the following considerations: rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than (A) the cost of termination of rail service over such properties measured by increased fuel consumption and operational costs for alternative modes of transportation, (B) the cost to the gross national product in terms of reduced output of goods and services, (C) the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby, and (D) the cost to the environment measured by damage caused by increased pollution;

"(4) conduct an ongoing analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of such analysis, and advise the Commission of the results of such evaluation;

"(5) within 180 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, issue additional regulations, after conducting a proceeding in accordance with the provisions of section 553 of title 5, United States Code, which contain—

"(A) standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

"(B) standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17 of the Urban Mass Transportation Act of 1964;

"(6) determine and publish, and from time to time revise and reissue, standards for determining (A) the 'revenue attributable to the rail properties', (B) the 'avoidable costs of providing service', (C) a 'reasonable return on the value,' and (D) a 'reasonable management fee', as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of title 5, United States Code; and

"(7) employ and utilize the services of attorneys and such other personnel as may be required in order properly to protect the interests of those communities and users of rail service which, for

whatever reason (such as their size or location) might not otherwise be adequately represented in the course of the reorganization process under this Act, until the assumption of such duties by the Office of Rail Public Counsel pursuant to section 27(4) (d) of the Interstate Commerce Act (49 U.S.C. 27(4) (d)).

“(e) **ADDITIONAL DUTIES.**—(1) Within 270 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall issue additional regulations, after conducting a proceeding in accordance with section 553 of title 5, United States Code. Such regulations shall (A) develop an accounting system which will permit the collection and publication by the Corporation or by profitable railroads providing service over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units, and (B) determine the ‘avoidable costs of providing rail freight service’, as that phrase is used in section 1a(6) (a) (ii) (A) of the Interstate Commerce Act. The Office may, at any time, revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed pursuant to this subsection.

“(2) Upon the request of a State in the region, within 90 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall prepare and publish an evaluation of the economic viability of any or all light density lines within such State which are not designated for inclusion in the final system plan. Such an evaluation shall include an analysis of the actions which may be necessary to make the operation of rail services over any such line economical. The results of each such evaluation shall be transmitted to the requesting State and published in the Federal Register, not later than 1 year after the date such request is received by the Office.”.

EQUITABLE DISTRIBUTION OF CARS FOR UNIT TRAIN SERVICE

SEC. 310. Section 1(12) of the Interstate Commerce Act (49 U.S.C. 1(12)), is amended by adding at the end thereof: “In applying the provisions of this paragraph, unit-train service and non-unit-train service shall be considered separate and distinct classes of service, and a distinction shall be made between these two classes of service and between the cars used in each class of service; questions of the justness and reasonableness of, or discrimination or preference or prejudice or advantage or disadvantage in, the distribution of cars shall be determined within each such class and not between them, notwithstanding any other provision of section 1, 2, or 3 of this Act (49 U.S.C. 1, 2, or 3), and of section 1, 2, or 3 of the Elkins Act (49 U.S.C. 41, 42, or 43). Coal cars supplied by shippers or receivers shall not be considered a part of such carrier’s fleet or otherwise counted in determining questions of distribution or car count under this paragraph or any provision of law referred to in this section. As used in this paragraph, the term ‘unit-train service’, means the movement of a single shipment of coal of not less than 4,500 tons, tendered to one carrier, on one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, via one route.”.

APPROPRIATIONS REQUEST

SEC. 311. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11) is amended by adding at the end thereof the following new subsection:

“(j) Whenever the Interstate Commerce Commission submits any budget estimate or request, other budget information (including manpower needs), legislative recommendations prepared testimony for congressional hearings, or comments on legislation, to the President or to the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress. No officer or agency of the United States shall have any authority to prohibit, impose conditions on, or in any way impair the free communication by such Commission with the Congress, its committees, or any of the Members of the Congress with respect to any budget estimate or request of the Commission.”.

LAW REVISION

SEC. 312. The Commission shall prepare, or shall cause to be prepared, in whole or in part by consultants, a proposed modernization and revision of the Interstate Commerce Act, and a proposed codification of all Acts supplementary to the Interstate Commerce Act. The Commission shall submit the final draft thereof to the Congress within 2 years after the date of enactment of this Act. The final draft shall include comments on each proposed provision, significant alternative provisions considered but not recommended, and such other information as may be useful to the Congress. The final draft shall be designed to simplify the present law and to harmonize regulation among the several modes of transportation subject to regulation under the Interstate Commerce Act.

TITLE IV—MERGERS AND CONSOLIDATIONS

RESPONSIBILITIES OF THE SECRETARY

SEC. 401. The Department of Transportation Act (49 U.S.C. 1651 et seq.) is amended by inserting after section 4 thereof the following new section 5:

“RAIL SERVICES

SEC. 5. (a) The Secretary may develop and make available to interested persons feasible plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail services (including, but not limited to, arrangements for joint use of tracks or other facilities and any acquisition or sale of assets) which the Secretary believes would result in a rail system which is more efficient, consistent with the public interest,

“(b) In order to achieve a more efficient, economical, and viable rail system in the private sector, the Secretary may, upon the request of any railroad and in accordance with subsections (a) through (e) of this section, assist in planning, negotiating, and effecting a unification or coordination of operations and facilities with respect to two or more railroads.

“(c) The Secretary may conduct such studies as are deemed advisable to determine the potential cost savings and possible improvements in the quality of rail services which are likely to result from unification or coordination with respect to two or more railroads, through the elimination of duplicative or overlapping operations and facilities; the reduction of switching operations; utilization of the shortest, or the most efficient, and economical routes; the exchange of trackage rights; the combining of trackage and of terminal or other facilities; the upgrading of tracks and other facilities used by two or more railroads; reduction of administrative and other expenses; and any other measures likely to reduce costs and improve rail service. For purposes of studies conducted under this section and the study described in section 901 of the Railroad Revitalization and Regulatory Reform Act of 1976, each railroad shall provide such information as may be requested by the Secretary in connection with the performance of functions under this section and such section 901. In furtherance of any of the functions or responsibilities of the Secretary under this section or such section 901, any officer or employee duly designated by the Secretary may obtain, from any railroad, information regarding the nature, kind, quality, origin, destination, consignor, consignee, and routing of property, without the consent of the consignor or consignee involved, notwithstanding the provisions of section 15(13) of the Interstate Commerce Act (49 U.S.C. 15(13)) and may, to the extent necessary or appropriate, exercise, with respect to any railroad, any of the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 713(c)), as provided therein, except that subpoenas shall be issued under the signature of the Secretary.

“(d) When requested by one or more railroads, the Secretary may also hold conferences with respect to any proposed unification or coordination project. The Secretary may invite officers and directors of all affected railroads; representatives of employees of such railroads who may be affected; the Interstate Commerce Commission; appropriate State and local government officials, shippers, and consumer representatives; and representatives of the Federal Trade Commission and of the Attorney General to one or more such conferences with respect to such a proposal. The Secretary may mediate any dispute which may arise in connection with any proposed unification or coordination project. Persons attending or represented at any such conference shall not be liable under the antitrust laws of the United States with respect to any discussion at such conference and as to any agreements reached at such conference, which are entered into with the approval of the Secretary in order to achieve or determine a plan of action to implement any such unification or coordination project.

“(e) Whenever any railroad submits a proposal for a merger or other action the approval of which is subject to the jurisdiction of the Interstate Commerce Commission under section 5(2) of the Interstate Commerce Act (49 U.S.C. 5(2)), the Secretary may, if he has not already done so, conduct a study of such proposal in order to determine whether or not, in his judgment, such proposal is in accordance with the standards set forth in section 5(2)(c) of such Act (49 U.S.C. 5(2)(c)). Whenever such proposal is the subject of an application and a proceeding before such Commission, the Secretary is author-

ized to appear before the Commission in any proceeding held with respect to such application.”.

MERGER PROCEDURE

SEC. 402. (a) Section 5(2)(f) of the Interstate Commerce Act (49 U.S.C. 5(2)(f)) is amended by inserting a new sentence immediately preceding the last sentence thereof as follows: “Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565).”.

(b) Section 5(2) of the Interstate Commerce Act (49 U.S.C. 5(2)) is amended by adding at the end thereof the following two new subdivisions:

“(g) In any case arising under this paragraph which involves a common carrier by railroad, the Commission shall—

“(i) within 30 days after the date on which an application is filed with the Commission and after a certified copy of such application is furnished to the Secretary of Transportation, (A) publish notice thereof in the Federal Register, or (B) if such application is incomplete, reject such application by order, which order shall be deemed to be final under the provisions of section 17;

“(ii) provide that written comments on an application, as to which such notice is published, may be filed within 45 days after the publication of such notice in the Federal Register;

“(iii) require that copies of any such comments shall be served upon the Secretary of Transportation and the Attorney General, each of whom shall be afforded 15 days following the date of receipt thereof to inform the Commission whether he will intervene as a party to the proceeding, and if so, to submit preliminary views on such application;

“(iv) require that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Secretary of Transportation, within 90 days after the publication of notice of the application in the Federal Register;

“(v) conclude any evidentiary proceedings, within 240 days following the date of such publication of notice, except that in the case of an application involving the merger or control of two or more class I railroads, as defined by the Commission, the Commission shall conclude any evidentiary proceedings not more than 24 months following the date upon which notice of the application was published in the Federal Register; and

“(vi) issue a final decision within 180 days following the date upon which the evidentiary proceeding is concluded.

If the Commission fails to issue a decision which is final within the meaning of section 17 within such 180-day period, it shall notify the Congress in writing of such failure and the reasons therefor. If the Commission determines that the due and timely execution of its functions under this paragraph so requires, or that an application brought under this paragraph is of major transportation importance,

it may order that the case be referred directly (without an initial decision by a division, individual Commissioner, board, or administrative law judge) to the full Commission for a decision which is final within the meaning of section 17.

“(h) The Secretary of Transportation may propose any modification of any transaction governed by this paragraph which involves a carrier by railroad. The Secretary shall have standing to appear before the Commission in support of any such proposed modification.”.

EXPEDITED RAILROAD MERGER PROCEDURE

SEC. 403. (a) Section 5 of the Interstate Commerce Act (49 U.S.C. 5) is amended by redesignating paragraphs (3) through (16) thereof as paragraphs (4) through (17) thereof, respectively, and by inserting therein a new paragraph (3), as follows:

“(3) (a) If a merger, consolidation, unification or coordination project (as described in section 5(c) of the Department of Transportation Act), joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to this part, is proposed by an eligible party in accordance with subdivision (b) during the period beginning on the date of enactment of this paragraph and ending on December 31, 1981, the party seeking authority for the execution or implementation of such transaction may utilize the procedure set forth in this paragraph or in paragraph (2).

“(b) Any transaction described in subdivision (a) may be proposed to the Commission by—

“(i) the Secretary of Transportation (hereafter in this paragraph referred to as the ‘Secretary’), with the consent of the common carriers by railroad subject to this part which are parties to such transaction; or

“(ii) any such carrier which, not less than 6 months prior to such submission to the Commission, submitted such proposed transaction to the Secretary for evaluation pursuant to subdivision (f).

“(c) Whenever a transaction described in subdivision (a) is proposed under this paragraph, the proposing party shall submit an application for approval thereof to the Commission, in accordance with such requirements as to form, content, and documentation as the Commission may prescribe. Within 10 days after the date of receipt of such an application, the Commission shall send a notice of such proposed transaction to—

“(i) the Governor of each State which may be affected, directly or indirectly, by such transaction if it is executed or implemented;

“(ii) the Attorney General;

“(iii) the Secretary of Labor; and

“(iv) the Secretary (except where the Secretary is the proposing party).

The Commission shall accompany its notice to the Secretary with a request for the report of the Secretary pursuant to clause (v) of subdivision (f). Each such notice shall include a copy of such application; a summary of the proposed transaction involved, and the proposing party's reasons and public interest justifications therefor.

“(d) The Commission shall hold a public hearing on each application submitted to it pursuant to subdivision (c), within 90 days after the date of receipt of such application. Such public hearing shall be held before a panel of the Commission duly designated for such purpose by the Commission. Such panel may utilize administrative law judges and the Rail Services Planning Office in such manner as it considers appropriate for the conduct of the hearing, the evaluation of such application and comments thereon, and the timely and reasonable determination of whether it is in the public interest to grant such application and to approve such proposed transaction pursuant to subdivision (g). Such panel shall complete such hearing within 180 days after the date of referral of such application to such panel, and it may, in order to meet such requirement, prescribe such rules and make such rulings as may tend to avoid unnecessary costs or delay. Such panel shall recommend a decision and certify the record to the full Commission for final decision, within 90 days after the termination of such hearing. The full Commission shall hear oral argument on the matter so certified, and it shall render a final decision within 120 days after receipt of the certified record and recommended decision of such panel. The Commission may, in its discretion, extend any time period set forth in this subdivision, except that the final decision of the Commission shall be rendered not later than the second anniversary of the date of receipt of such an application by the Commission.

“(e) In making its recommended decision with respect to any transaction proposed under this paragraph, the duly designated panel of the Commission shall—

“(i) request the views of the Secretary, with respect to the effect of such proposed transaction on the national transportation policy, as stated by the Secretary, and consider the matter submitted under subdivision (f);

“(ii) request the views of the Attorney General, with respect to any competitive or anticompetitive effects of such proposed transaction; and

“(iii) request the views of the Secretary of Labor, with respect to the effect of such proposed transaction on railroad employees, particularly as to whether such proposal contains adequate employee protection provisions.

Such views shall be submitted in writing and shall be available to the public upon request.

“(f) Whenever a proposed transaction is submitted to the Secretary by a common carrier by railroad pursuant to clause (ii) of subdivision (b), and whenever the Secretary develops a proposed transaction for submission to the Commission pursuant to subdivision (c), the Secretary shall—

“(i) publish a summary and a detailed account of the contents of such proposed transaction in the Federal Register, in order to provide reasonable notice to interested parties and the public of such proposed transaction;

“(ii) give notice of such proposed transaction to the Attorney General and to the Governor of each State in which any part of the properties of the common carriers by railroad involved in such proposed transaction are situated;

“(iii) conduct an informal public hearing with respect to such proposed transaction and provide an opportunity for all interested parties to submit written comments;

“(iv) study each such proposed transaction with respect to—

“(A) the needs of rail transportation in the geographical area affected;

“(B) the effect of such proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

“(C) the environmental impact of such proposed transaction and of alternative choices of action;

“(D) the effect of such proposed transaction on employment;

“(E) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

“(F) the rationalization of the rail system;

“(G) the impact of such proposed transaction on shippers, consumers, and railroad employees;

“(H) the effect of such proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

“(I) whether such proposed transaction will improve rail service; and

“(v) submit a report to the Commission setting forth the results of each study conducted pursuant to clause (iv), within 10 days after an application is submitted to the Commission pursuant to subdivision (c), with respect to the proposed transaction which is the subject of such study. The Commission shall give due weight and consideration to such report in making its determinations under this paragraph.

“(g) The Commission may—

“(i) approve a transaction proposed under this paragraph, if the Commission determines that such proposed transaction is in the public interest; and

“(ii) condition its approval of any such proposed transaction on any terms, conditions, and modifications which the Commission determines are in the public interest; or

“(iii) disapprove any such proposed transaction, if the Commission determines that such proposed transaction is not in the public interest.

In each such case, the decision of the Commission shall be accompanied by a written opinion setting forth the reasons for its action.”.

(b) Section 5 of the Interstate Commerce Act (49 U.S.C. 5) is further amended—

(1) in paragraph (2)(a) thereof by inserting “or paragraph (3)” immediately after “subdivision (b)”;

(2) in paragraph (2)(f) thereof, by inserting immediately after “(2)” the following “or paragraph (3)”;

(3) in paragraph (5) thereof, as redesignated by this Act, by striking out “paragraph (2)” and inserting in lieu thereof “para-

graphs (2) and (3)", and by striking out "paragraph (5)" and inserting in lieu thereof "paragraph (6)";

(4) in paragraph (8) thereof, as redesignated by this Act, by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (5)", and by striking out "(12)" and inserting in lieu thereof "(13)";

(5) in paragraph (10) thereof, as redesignated by this Act, by striking out "(7)" and inserting in lieu thereof "(8)";

(6) in paragraph (14) thereof, as redesignated by this Act, by striking out "(12)" and inserting in lieu thereof "(13)";

(7) in paragraph (16), as redesignated by this Act, by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (15)";

(8) in paragraph (17), as redesignated by this Act, by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (15)"; and

(9) by striking out "subparagraph" each place it appears and inserting in lieu thereof "subdivision".

TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

DEFINITIONS

SEC. 501. As used in this title, the term—

(1) "applicant" means any railroad, or other person (including a governmental entity) which submits an application to the Secretary for the guarantee of an obligation under which it is an obligor or for a commitment to guarantee such an obligation;

(2) "equipment" includes any type of new or rebuilt standard gauge locomotive, caboose, or general service railroad freight car the use of which is not limited to any specialized purpose by particular equipment, design, or other features. General service railroad freight car includes a boxcar, gondola, open-top or covered hopper car, and flatcar. The Secretary may designate other types of cars as equipment upon a written finding, with reasons therefor, that such designation is consistent with the purposes of this Act;

(3) "facilities" means—

(A) track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, enginehouses, and public improvements used or useable for rail service operations;

(B) communication and power transmission systems, including electronic, microwave, wireless, communication, and automatic data processing systems, electrical transmission systems, powerplants, power transmission systems, powerplant machinery and equipment, structures, and facilities for the transmission of electricity for use by railroads;

(C) signals, including signals and interlockers;

(D) terminal or yard facilities, including trailer-on-flat-car and container-on-flat-car terminals, express or railroad

terminal and switching facilities, and services to express companies and railroads and their shippers, including ferries, tugs, carfloats, and related shoreside facilities designed for the transportation of equipment by water; or

(E) shop or repaired facilities or any other property used or capable of being used in rail freight transportation services or in connection with such services or for originating, terminating, improving, and expediting the movement of equipment;

(4) "Fund" means the Railroad Rehabilitation and Improvement Fund established under section 502 of this title;

(5) "holder" means the obligee or creditor under an obligation, except that when a bank or trust company is acting as agent or trustee for such an obligee or creditor, the term refers to such bank or trust company;

(6) "obligation" means a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation issued or granted to finance or refinance equipment or facilities acquisition, construction, rehabilitation, or improvement; and

(7) "obligor" means the debtor under an obligation, including the original obligor and any successor or assignee of such obligor who is approved by the Secretary.

THE RAIL FUND

SEC. 502. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States the Railroad Rehabilitation and Improvement Fund. The Fund shall be administered by the Secretary, without the requirement of annual authorizations, in order (1) to secure the payment, when due, of the principal of, any redemption premium on, and any interest on, all Fund anticipation notes and Fund bonds, by a first pledge of and a lien on all revenues payable to and assets held in the Fund, and (2) to carry out the purposes, functions, and powers authorized in this title.

(b) PURPOSE.—The purpose of the Fund is to provide capital which is necessary to furnish financial assistance to railroads, to the extent of appropriated funds, for facilities maintenance, rehabilitation, improvements, and acquisitions, and such other financial needs as the Secretary approves, in accordance with this title.

(c) GENERAL POWERS.—In order to achieve the objectives and to carry out the purposes of this title, the Secretary may—

(1) issue and sell securities, including Fund anticipation notes and Fund bonds, as provided for in sections 507 and 508 of this title;

(2) make and enforce such rules and regulations, and make and perform such contracts, agreements, and commitments, as may be necessary to appropriate to carry out the purposes or provisions of this title;

(3) prescribe and impose fees and charges for services by the Secretary, pursuant to this title;

(4) settle, adjust, and compromise, and, with or without consideration or benefit to the Fund, release or waive, in whole or in

part, in advance or otherwise, any claim, demand, or right of, by, or against the Secretary or the Fund;

(5) sue and be sued, complain, and defend, in any State, Federal, or other court;

(6) acquire, take, hold, own, deal with, and dispose of, any property, including carrier redeemable preference shares as provided for in section 505(d) of this title; and

(7) determine, in accordance with appropriations, the amounts to be withdrawn from the Fund and the manner in which such withdrawals shall be effected.

(d) **ASSISTANCE FROM OTHER AGENCIES.**—The Secretary, with the consent of any department, establishment, or corporate or other instrumentality of the Federal Government, may utilize and act through any such department, establishment, or instrumentality. The Secretary may, with such consent, utilize the information, services, facilities, and personnel of any such department, establishment, or instrumentality, on a reimbursable basis. Each such department, establishment, and instrumentality is authorized to furnish any such assistance to the Secretary upon written request from the Secretary.

(e) **JURISDICTION.**—Whenever the Secretary or the Fund is a party to any civil action under this title, such action shall be deemed to arise under the laws of the United States. The district courts of the United States shall have original and removal jurisdiction of any action in which the Secretary or the Fund is a party, without regard to the amount in controversy. No attachment or execution may be issued against the Secretary, the Fund, or any property thereof prior to the entry of final judgment to such effect in any State, Federal, or other court.

(f) **CONTENTS OF FUND.**—There shall be deposited in the Fund, subject to utilization pursuant to subsection (i) of this section—

(1) funds received by the Secretary for deposit in the Fund, representing the proceeds from the issuance and sale by the Secretary to the Secretary of the Treasury of Fund anticipation notes, as provided in section 507 of this title;

(2) funds as may be hereafter appropriated to the Fund following the submission to the Congress of the Secretary's report, under section 504 of this title, with respect to the perceived needs of the rail industry for facilities rehabilitation and improvement, projected cash shortfalls within the rail industry, and the scope and sources of long-term public sector funding for the Fund;

(3) funds received by the Secretary for deposit in the Fund, representing the proceeds from the issuance and sale of Fund bonds, as provided in section 508 of this title;

(4) redeemable preference shares issued by a railroad and purchased by the Secretary on behalf of the Fund and funds received by the Fund representing dividends and redemption payments on such shares, as provided in sections 505(d) and 506(a) and (b) of this title;

(5) income and gains realized by the Fund from any investment of excess funds, pursuant to subsection (g) of this section, and the obligations or securities comprising such investments; and

(6) any other receipts of the Fund.

(g) **EXCESS FUNDS INVESTMENT.**—If the Secretary determines that the amount of money in the Fund exceeds the amount required for current needs, the Secretary may, subject to sections 508 (g) and (h) of this title, direct the Secretary of the Treasury to invest such amounts as the Secretary deems advisable, for such periods as the Secretary directs, in obligations of, or obligations guaranteed by, the Government of the United States, or in such other governmental or agency obligations or other securities of the United States as the Secretary of the Treasury deems appropriate.

(h) **DEPOSITORY.**—The Secretary may deposit moneys of the Fund with any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Secretary of the Treasury deems appropriate.

(i) **USES.**—Moneys in the Fund shall be utilized—

(1) to provide financial assistance to railroads for facilities maintenance, rehabilitation, improvement, and acquisition projects, and for such other financial needs as may be approved by the Secretary pursuant to section 505 of this title,

(2) to effect the payment, when due, of the principal of, and any interest on, Fund anticipation notes and Fund bonds issued by the Secretary pursuant to sections 507 and 508 of this title,

(3) to redeem, as contemplated by section 507(c) and section 508(g) of this title, Fund anticipation notes and Fund bonds,

(4) in such amounts as are provided in appropriation acts, to make payment of all expenses incurred by the Secretary in carrying out his duties with respect to the Fund, and

(5) to make transfers to the general fund of the Treasury.

CLASSIFICATION AND DESIGNATION OF RAIL LINES

SEC. 503. (a) TRAFFIC DENSITY ANALYSIS.—Within 90 days after the date of enactment of this Act, each railroad designated by the Commission as a class I railroad shall prepare and submit to the Secretary a full and complete analysis of the rail system operated by it. Such analysis shall indicate the traffic density for the preceding 5 calendar years on each of the main and branch rail lines of the railroad submitting such analysis. The requirements of the two preceding sentences shall not apply to any railroad subject to reorganization pursuant to the Regional Rail Reorganization Act of 1973.

(b) **PRELIMINARY STANDARDS AND DESIGNATIONS.**—Within 180 days after the date of enactment of this Act, the Secretary shall develop and publish—

(1) the preliminary standards for classification, in at least 3 categories, of main and branch rail lines according to the degree to which they are essential to the rail transportation system; and

(2) the preliminary designations with respect to each main and branch rail line, in accordance with such standards for classification.

The classification of rail lines for purposes of this subsection shall be based on the level of usage measured in gross-ton-miles, the contribution to the economic viability of the railroad which controls such lines, and the contribution of such lines to the probable economic viability of any other railroads which participate in the traffic originating on such lines. In determining “level of usage” and “probable economic

viability", for purposes of such classification, the Secretary shall take into account operational service and other appropriate factors, and he may make reasonable allowance for differences in operation among individual railroads or groups of railroads.

(c) **PUBLIC HEARINGS.**—Commencing 30 days after the date of publication of the standards and designations required under subsection (b) of this section, the Office shall conduct public hearings, at representative locations, to solicit comments and receive views on the preliminary standards for classification and on the preliminary designations. The Office shall give notice of the date, time, and place of each such hearing, and such notices shall be designed and placed in such manner that all interested parties will have a full and fair opportunity to be heard.

(d) **REPORT BY OFFICE.**—Within 120 days after the date of publication of the standards and designations required under subsection (b) of this section, the Office shall submit a report to the Secretary containing its conclusions and recommendations with respect to such preliminary standards for classification and such preliminary designations. This report shall be based on the record which was developed by the Office during the hearings under subsection (c) of this section, as supplemented by such studies as may be undertaken by the Office.

(e) **FINAL STANDARDS AND DESIGNATIONS.**—Within 150 days after the date of receipt of the report required under subsection (d) of this section, the Secretary, with the cooperation and assistance of the Office, shall, after giving due consideration to such report, prepare and publish—

(1) the final standards for classification of main and branch rail lines; and

(2) the final designations with respect to each main and branch rail line, in accordance with such standards for classification, including findings to support any material change which is made in a final designation from the corresponding preliminary designation.

CAPITAL NEEDS STUDY

SEC. 504. (a) DEFERRED MAINTENANCE STATEMENT.—Within 180 days after the date of enactment of this Act, each railroad designated by the Commission as a class I railroad (other than a railroad subject to reorganization pursuant to the Regional Rail Reorganization Act of 1973) shall prepare and submit to the Secretary a full and complete statement (1) of such railroad's deferred maintenance and delayed capital expenditures, as of December 31, 1975, and (2) of the projected amounts of appropriate maintenance to be performed and capital expenditures to be made for such railroad's facilities and equipment, during each of the years from 1976 through 1985. Each railroad shall submit such additional information as may be required from it by the Secretary, in connection with his duties under section 503 of this title or under this section, prior to July 1, 1977, including the projected sources of and uses for the funds required by such railroad for such projected program.

(b) **PRELIMINARY FINANCING RECOMMENDATIONS.**—Within 540 days after the date of enactment of this Act, the Secretary, after giving due consideration to (1) the final designations under section 503(e)

of this title, (2) the information furnished under subsection (a) of this section, and (3) any other relevant information, shall develop, publish, and transmit—

(A) to the Congress, preliminary recommendations as to the amount and type of carrier equity and other financing to be effected through the Fund, or through any other funding mechanism, recommended by the Secretary, based upon his view of the rail industry's facilities rehabilitation and improvement needs, the projected gross national product, the potential demand for rail service and the types of service capable of meeting that potential demand, the potential revenues and costs (including capital costs associated with those revenues), the demand for rail services for which the railroads could compete on an economic basis, the probable sources of funding for the capital costs of providing those services, and which of those costs must be provided by public financing, as projected through December 31, 1985; and

(B) to the Congress and to the Secretary of the Treasury, preliminary recommendations as to the means by which the Federal share, if any, of such equity and other financing should be provided.

In preparing such recommendations, the Secretary shall specifically consider and evaluate the public benefits and costs which would result from public ownership of railroad rights-of-way.

(c) **EVALUATION.**—Within 90 days after the date of publication of the Secretary's preliminary recommendations under subsection (b) of this section, the Secretary of the Treasury shall publish and transmit to the Secretary and to the Congress his evaluation thereof and any recommendations with respect to the matters referred to in subsection (b) (3) (B) of this section.

(d) **FINAL RECOMMENDATIONS.**—Within 90 days after the date of receipt of the evaluation, transmitted under subsection (c) of this section, the Secretary shall, after giving due consideration to such recommendations, prepare and transmit to the Congress his final recommendations with respect to the matters referred to in subsection (b) of this section.

REHABILITATION AND IMPROVEMENT FINANCING

SEC. 505. (a) IN GENERAL.—Any railroad may apply to the Secretary, following the date of enactment of this Act and in accordance with regulations promulgated by the Secretary, for financial assistance for facilities rehabilitation and improvement financing and for such other financial assistance as may be approved by the Secretary. Any regulations promulgated by the Secretary, pursuant to this section shall include specific and detailed standards in accordance with which the Secretary shall conduct the evaluations and make the determinations required in subsection (b) (2) of this section.

(b) **APPLICATION AND DETERMINATION.**—(1) Each application for facilities rehabilitation and improvement financing shall set forth—

(A) a description of the proposed facilities rehabilitation and improvement project for which such railroad is seeking financial assistance, and of the current physical condition of such facilities;

(B) the classification of each main and branch rail line included

in such project, as determined in accordance with the final standards and designations under section 503(e) of this title;

(C) the track standard under which each such line has been and is being operated and the reasons therefor, and the safety standards and signal requirements necessary under such a standard to prevent loss of life and serious accident or injury at grade crossings;

(D) the track standard necessary, in the judgment of such railroad, to provide reliable and competitive freight service (and passenger service, where applicable) over each such line, together with such railroad's recommendations as to (i) the most economical method of improving the physical condition of each such line to meet such track standard, (ii) the cost of providing adequate safety standards and signals, and (iii) an economic analysis of the cost of such improvements in condition and in safety standards and signals;

(E) such railroad's estimate as to the cost of labor and materials, and the date of completion, and its opinion as to the priority to be accorded such portions of the proposed project as are reasonably divisible;

(F) the amount and kind of Federal financial assistance required by such railroad in order to complete the proposed project; and

(G) such other information as the Secretary shall by regulation require to assist him in evaluating such application in accordance with this section or for carrying out the purposes of this title.

(2) The Secretary shall act upon each such application within 6 months after the date on which all required information is received, except as otherwise provided in subsection (a)(2) of this section. The Secretary may approve any such application if he determines that providing the requested financial assistance is in the public interest. When making such a determination, the Secretary shall evaluate and consider (A) the availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed and the railroad's rate of return on total capital (represented by the ratio which such carriers net income, including interest on long-term debt, bore to the sum of average shareholder's equity, long-term debt, and accumulated deferred income tax for fiscal year 1975) as determined in accordance with the uniform system of accounts promulgated by the Commission, (B) the interest of the public in supplementing such other funds as may be available in order to increase the total amount of funds available for railroad financing, and (C) the public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify such public costs. Except as provided in the last sentence of this paragraph, the Secretary, in determining the extent to which a project will provide public benefits, shall give the highest priority to projects which will enhance the ability of the applicant carrier or other carriers to provide essential freight services. The Secretary, in granting financial assistance to any applicant, shall assign the highest priority, among applications for assistance which would return equal public

benefits, to applications for assistance for providing safety improvements and signals, including underpasses or overpasses at railroad crossings at which injury or loss of life has frequently occurred or is likely to occur.

(c) **FINANCING AGREEMENT.**—Upon the approval of an application for financial assistance under this section, the Secretary shall promptly enter into an agreement with such railroad to provide financing in such amounts and at such times as is sufficient, in the judgment of the Secretary, to meet the reasonable cost, in whole or in part, of the facilities rehabilitation and improvement project which has been approved, in whole or in part. Each such agreement shall include such terms and conditions as are necessary or appropriate, in the judgment of the Secretary, to assure that the financing will be used only in the manner, and for the purposes, approved by the Secretary.

(d) **AUTHORIZATION.**—(1) In the case of a railroad other than a railroad in reorganization under section 77 of the Bankruptcy Act, financing pursuant to this section shall be in the form of purchase by the Secretary of redeemable preference shares at par. Such shares shall be specifically issued for such purpose in accordance with the terms and conditions set forth in section 506 of this title.

(2) (A) In the case of a railroad in reorganization under section 77 of the Bankruptcy Act, the Secretary, in order to provide financing pursuant to this section, may agree to purchase redeemable preference shares of such railroad at par as part of a plan of reorganization of such railroad approved by the court having jurisdiction over the reorganization of such railroad. Such shares shall be specifically issued in accordance with the terms and conditions set forth in section 506 of this title.

(B) The Secretary, in order to provide financing pursuant to this section, may also purchase certificates issued under section 77(c) (3) of the Bankruptcy Act by a trustee of a railroad in reorganization and approved by the reorganization court, under such terms and conditions as may be approved by the Secretary and the reorganization court. In purchasing such trustee certificates or at any time thereafter, the Secretary may agree with the trustee of such railroad in reorganization, subject to the approval of the reorganization court, to exchange such certificates for redeemable preference shares issued, in accordance with the terms and conditions set forth in section 506 of this title, in connection with a plan of reorganization approved by the reorganization court. No certificate shall be purchased under this section unless and until the Secretary makes a finding in writing that—

(i) such certificates cannot otherwise be sold at a reasonable rate of interest;

(ii) the project to be financed can reasonably be expected to be maintained as part of a financially self-sustaining railroad system; and

(iii) the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

(3) The total par value of the redeemable preference shares and the amount of trustee certificates which the Secretary may purchase from the proceeds received from the issuance and sale of Fund anti-

pation notes shall not exceed \$600,000,000. Not more than \$100,000,000 of such proceeds may be used to purchase trustee certificates.

(e) FUTURE PURCHASES OF REDEEMABLE PREFERENCE SHARES.—The total par value of the redeemable preference shares which the Secretary may purchase under this title after September 30, 1978, shall be determined by the Congress following the receipt by the Congress of the Secretary's recommendations as to the scope and sources of funding of the Fund or any recommended alternative financing mechanism, as submitted pursuant to section 504 of this title, except that—

(1) the amount of the Secretary's investment in redeemable preference shares in any fiscal year (out of proceeds other than those derived through the issuance and sale of Fund anticipation notes) shall not, when added to the amount of his prior investment in such shares, exceed 200 percent of the aggregate principal amount of the Fund bonds which (A) have been issued by the Secretary prior to such fiscal year, and (B) are projected to be issued by the Secretary through the end of such fiscal year; and

(2) neither redemptions of Fund bonds nor their payment at scheduled maturity shall have any bearing on the limitation in paragraph (1) of this subsection.

REDEEMABLE PREFERENCE SHARES

SEC. 506. (a) CHARACTERISTICS.—The redeemable preference shares acquired by the Secretary pursuant to section 505(d) of this title are securities which are issued by a railroad for the purpose of obtaining financing under this title. Each such redeemable preference share—

(1) shall be nonvoting and shall have a par value of \$10,000;

(2) shall be senior in right (i) to all common stock of the issuing railroad, whenever issued, except that the Secretary may make any such redeemable preference share subordinate to any common stock which was issued as a result of an exchange for securities which were senior in right to common stock, if (I) such exchange took place pursuant to a court-approved reorganization plan under section 77 of the Bankruptcy Act (11 U.S.C. 205), and (II) the railroad subject to such reorganization plan was in reorganization under such section 77 prior to the date of enactment of this Act, (ii) to any previously issued preferred stock where such seniority does not mitigate any rights of the holders of such stock accorded by the terms and conditions of such stock, and (iii) to any subsequently issued preferred stock, with respect to dividend and redemption payments and in case of liquidation or dissolution of such railroad, but shall be otherwise subordinate in such matters to any of such railroad's previously issued and outstanding securities which rank ahead of its common stock and shall be subordinate to all securities other than common stock (except in those cases in which the Secretary has provided for subordination pursuant to clause (i) of this paragraph) which is received in exchange as a part of a court approved reorganization plan under section 77 of the Bankruptcy Act (11 U.S.C. 205) approved after the date of enactment of this sentence for previously incurred senior debt or previously issued and outstanding securities which ranked ahead of its common stock;

(3) shall accrue dividends, commencing on the 10th anniversary date of the date of its original issuance, at such rate as shall be fixed by the Secretary for each issuance prior to the issuance thereof and which, when added to the amount of the mandatory redemption payments under subparagraph (4) of this paragraph shall return to the Fund not less than 150 percent of the aggregate par value thereof, over the scheduled life of the issue and in annual payments which shall be as nearly equal as practicable; and

(4) shall be subject to mandatory redemption, at par, commencing not earlier than the 6th and not later than the 11th (as determined by the Secretary for each issuance) anniversary date of the date of its original issuance, in annual amounts which shall, over the period ending (as determined by the Secretary for each issuance) not later than the 30th anniversary date of the date of its original issuance, aggregate the total par value of such share and, except to permit the railroad to prepay its redemption payments, the number of such annual redemption payments shall in no event be less than 15; and

(5) the proceeds from the issuance of which are to be expended solely to reduce the deferred maintenance on facilities, shall in no event yield (A) less than the minimum permissible yield determinable in accordance with paragraphs (3) and (4) of this subsection, nor (B) more than such railroad's rate of return on total capital (represented by the ratio which such carrier's net income, including interest on long-term debt, bore to the sum of the average shareholder's equity, long-term debt, and accumulated deferred income tax credits for the three fiscal years preceding the date of submission of the application) as determined in accordance with the uniform system of accounts promulgated by the Commission in those cases in which such rate of return exceeded such minimum permissible yield.

(b) DEPOSIT.—All redeemable preference shares which are acquired by the Secretary pursuant to section 505(d) of this title shall, upon such acquisition, be deposited in the Fund.

(c) OVERDUE PAYMENTS.—Whenever any dividend or redemption payment which is due on redeemable preference shares issued by any railroad remains unpaid for a period of 4 months, the Secretary shall be entitled to appoint two members to the Board of Directors of such railroad. The term of office of such members shall not extend beyond the period during which such dividend or redemption payments remains unpaid.

FUND ANTICIPATION NOTES

SEC. 507. (a) GENERAL.—The Secretary shall, until September 30, 1978, issue and sell, and the Secretary of the Treasury until such date shall, to the extent of appropriated funds, purchase Fund anticipation notes in an aggregate principal amount of not more than \$600,000,000, in order to provide financial assistance to railroads for such financing needs as the Secretary approves.

(b) TERMS OF ISSUE.—Fund anticipation notes shall be issued in denominations of \$100,000 (or any integral multiple thereof), upon such terms and conditions, with such maturities, such rates of interest,

if any, and such redemption premiums, if any, as the Secretary in his sole discretion may determine. The date of maturity of each Fund anticipation note may not exceed 7 years from the date of its issuance.

(c) **REDEMPTION.**—If the Congress, following its receipt of the recommendations of the Secretary pursuant to section 504(d) of this title (with respect to the amount of facilities rehabilitation and improvement financing which should be effected through the Fund and the method of long-term public sector funding therefor) authorizes the issuance of Fund bonds, the Secretary shall redeem the Fund anticipation notes then outstanding, in such manner, and over such period of time, as the Secretary shall determine, from the proceeds of the sale of such Fund bonds and from such other public sector moneys as have been appropriated to the Fund.

(d) **REMITTANCE AND TERMINATION.**—If the Congress does not, on or before September 30, 1978, enact legislation of the type referred to in subsection (c) of this section, the Secretary shall hold in trust all redeemable preference shares issued by railroads which are held in the Fund, and the Fund shall thereupon terminate.

FUND BONDS

SEC. 508. (a) ISSUANCE.—The Secretary may, following enactment of the legislation referred to in section 507(c) of this title, issue Fund bonds in denominations of \$100,000 (or any integral multiple thereof) in such total amounts as may be authorized by the Congress. No Fund bonds—

(1) shall be issued which mature in less than 8, or more than 15, years from the date of original issuance thereof;

(2) shall be issued later than the 10th anniversary of the date of publication of the final standards and designations under section 503(e) of this title; and

(3) shall, except as otherwise provided pursuant to subsections (d)(6) and (g) of this section, be subject to redemption (at the option of the Secretary) (A) at any time prior to the 10th anniversary of the date of original issuance thereof, and (B) at any time thereafter.

(b) **PLEDGE AND LIEN.**—The Secretary, subject to sections 502(g) and 508(g) of this title, shall impose a first pledge of, and a first lien on, all revenues payable to, and assets held in, the Fund, and appropriated for the use of the Secretary pursuant to this title. The Secretary may impose such a pledge of and lien on all other revenues or property of the Fund. The purpose of any such pledge and lien shall be to secure the payment, when due, of the principal of, any redemption premiums on, and any interest on, all Fund anticipation notes and Fund bonds, and for other purposes incidental thereto. Such incidental purposes may include the creation of reserve and other funds which may be similarly pledged and used, to such extent and in such manner as the Secretary deems necessary or desirable. Any pledge made by the Secretary shall be valid and binding from the time it is made. The revenues and assets held in the Fund, and the revenues or property of the Fund which are so pledged and which are subsequently received by the Fund, shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act. The lien of

any such pledge shall be valid and binding as against all parties having claims of any kind, in tort, contract, or otherwise, against the Secretary or the Fund, without regard to whether such parties have notice thereof. No instrument by which a pledge is created need be recorded or filed to protect such pledge.

(c) **ENHANCEMENT OF MARKETABILITY.**—The Secretary may enter into binding covenants with the holders of Fund bonds, and with the trustee, if any, under any agreement entered into in connection with the issuance of such bonds with respect to (1) the establishment of reserves, and other funds; (2) stipulations concerning the subsequent issuance of obligations; and (3) such other matters as the Secretary deems necessary or desirable to enhance the marketability of Fund bonds.

(d) **SPECIFIC DETERMINATIONS.**—Subject to subsection (a) of this section, the Secretary may determine, with respect to Fund bonds—

- (1) the form and denominations in which they shall be issued;
- (2) the time when they shall be sold, and in what amounts;
- (3) the time when they shall mature;
- (4) the price thereof at sale;
- (5) the rate of interest thereon;
- (6) whether, and in what manner, they may be redeemed prior to the date when they mature; and
- (7) whether they shall be negotiable or nonnegotiable and whether they shall be bearer or registered instruments, and any indentures or covenants relating thereto.

(e) **CHARACTERISTICS.**—Fund bonds issued by the Secretary under this section shall—

- (1) contain a recital that they are used under this section, which shall be conclusive evidence as to the validity and regularity of issuance and sale of such Fund bonds;
- (2) be subject to such other terms and conditions as the Secretary may, by the resolution authorizing their issuance, determine;
- (3) be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States;
- (4) not be exempted from Federal, State, and local taxation; and
- (5) not be debts or enforceable general obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the United States. Neither the full faith and credit, nor the general taxing power, of the Federal Government shall be pledged to the payment of the principal of, any premium on, or interest on, such Fund bonds.

(f) **NO PERSONAL LIABILITY.**—Neither the Secretary, nor any other individual, who executes any Fund anticipation notes or fund bonds, shall be subject to any personal liability or accountability by reason of the issuance of any such notes or bonds.

(g) **REDEMPTION AND TRANSFER.**—If, after the 10th anniversary date of the original issuance of the initial series of Fund bonds, the amount in the Fund, exclusive of the value of any redeemable preference shares held by the Fund, exceeds 250 percent of the amount required to satisfy amounts due in the succeeding fiscal year on account

of Fund bonds, the Secretary may use such excess to redeem Fund bonds in accordance with their terms or may withdraw all or part of such excess from the Fund and transfer it to the general fund of the United States. When all Fund bonds have been redeemed, all amounts remaining in the Fund or thereafter accruing to it shall be transferred to the general fund of the United States, except to the extent necessary to cover such expenses of the Fund as may be required to carry on and complete any remaining responsibilities.

(h) **PURCHASE BY SECRETARY.**—The Secretary, subject to such agreements with holders of Fund bonds as may then exist, is authorized (out of any funds available) to purchase Fund anticipation notes or Fund bonds. Upon any such purchase, such bonds and notes shall be canceled.

AUTHORIZATIONS

SEC. 509. There is authorized to be appropriated to the Secretary of the Treasury for the purposes of the Fund not to exceed \$600,000,000 and the Secretary of the Treasury is authorized and directed to purchase, from time to time, prior to March 31, 1979, from the Secretary, out of such moneys in the Treasury as are appropriated under this sentence, Fund anticipation notes in such aggregate principal amounts, subject to the foregoing limitation, as the Secretary may so offer for sale. No money in the Fund, regardless of source, shall be obligated, expended, or otherwise committed to any purpose from the Fund prior to or after March 31, 1979, without prior approval thereof in an annual appropriations Act. The Fund shall not qualify as one of the exceptions provided in section 401(d) of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1351(d)).

EXEMPTION

SEC. 510. Neither the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a), nor the registration and prospectus delivery requirements of the Securities Act of 1933, nor the provisions of the securities laws of any State, shall be applicable to the issuance and sale of redeemable preference shares by railroads under this title.

GUARANTEE OF OBLIGATIONS

SEC. 511. (a) **GENERAL.**—The Secretary may, in accordance with the provisions of this section, guarantee and make commitments to guarantee the payment of the principal balance of, and any interest on, an obligation of an applicant prior to, on, or after the date of execution or the date of disbursement of such obligation, if the proceeds of such obligation shall be or have been used to acquire or to rehabilitate and improve facilities or equipment, or to develop or establish new railroad facilities. Each guarantee of such an obligation shall be made in accordance with the provisions of sections 511 through 513 of this title and such rules as the Secretary may prescribe to protect reasonably the interest of the United States. Each application for the guarantee of such an obligation or for a commitment to guarantee such an obligation shall be made in writing to the Secretary in such form and with such content as the Secretary prescribes. Such application shall be granted, in whole or in part, if the Secretary determines that the pro-

posed, negotiated, or executed obligation is eligible for such guarantee. Each such guarantee or commitment to guarantee shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Secretary deems appropriate, consistent with the purposes of this title. Such a guarantee or commitment to guarantee shall inure to the benefit of the holder of the obligation to which such guarantee or commitment to guarantee applies.

(b) **FUND.**—An obligation guarantee fund shall be established and administered by the Secretary as a revolving fund to carry out the provisions of sections 511 through 513 of this title. Moneys in the obligation guarantee fund shall be deposited in the Treasury of the United States to the credit of such fund or invested in bonds or other obligations of the United States approved by the Secretary of the Treasury.

(c) **FULL FAITH AND CREDIT.**—All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(d) **MODIFICATIONS.**—The Secretary may approve any modification of any provision of a guarantee, or of a commitment to guarantee an obligation, including the rate of interest, time of payment of interest or principal, security, or any other terms and conditions, if the Secretary makes a finding in writing that such modification is equitable and is in the overall best interests of the United States under this title, and that the holder of such obligation consents to such modification.

(e) **EXTENT OF AUTHORITY.**—(1) The aggregate unpaid principal amounts of obligations which may be guaranteed by the Secretary under this section shall not exceed \$1,000,000,000 at any one time, of which not to exceed \$150,000,000 may be guaranteed for the purposes described in paragraph (2) of this subsection.

(2) Obligations may be guaranteed for the purpose of improving rail properties designated in the final system plan pursuant to section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C)), if the proceeds of such obligations shall be or have been used to acquire or rehabilitate and improve facilities or equipment in a manner that returns the most public benefits for the costs involved.

(f) **RATE OF INTEREST.**—The rate of interest (exclusive of premium charges for a guarantee and service fees) which shall be paid on the unpaid principal balance of each obligation guaranteed by the Secretary under this section, shall not exceed an annual percentage rate which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.

(g) **PREREQUISITES FOR GUARANTEES.**—No obligation shall be guaranteed and no commitment shall be made to guarantee any obligation under this section, unless and until the Secretary makes a finding in writing that—

(1) an obligation for equipment acquisition, rehabilitation, or improvement is secured (A) by the particular equipment which is to be financed or refinanced by such obligation, or (B) in the case of the rehabilitation or improvement of leased equipment, by the lease;

(2) payment of the obligation is required by its terms to be made within 25 years from the date of its execution;

(3) the financing or refinancing is justified by the present and probable future demand for rail services to be rendered by the applicant and will serve to meet demonstrable needs for rail services and to provide shippers with improved service;

(4) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, or improved with the proceeds of the obligation will be economically and efficiently utilized;

(5) the prospective earning power of the applicant, or the value or prospective earning power of any equipment or facilities to be improved, rehabilitated, or acquired (or any combination of the foregoing), together with any other security offered by the applicant, is sufficient to provide the United States with reasonable security and protection, except that if the value or prospective earning power of such equipment or facilities is equal to or greater than the amount of the obligation to be guaranteed, the Secretary may not, on the basis of the lack of prospective earning power of the applicant, find that the United States will not be provided with the reasonable security and protection referred to in this paragraph; and

(6) the transaction will result in an improvement in the ability of any affected railroad to transport passengers or freight.

(h) **GENERAL REQUIREMENT.**—The recipients of any guarantees of, or of any commitments to guarantee, an obligation under this section, shall, consistent with their capital resources, maintain their facilities, on a continuing basis, in accordance with standards promulgated under this subsection. The Secretary shall assure compliance with this requirement by regular periodic inspection.

(i) **CONDITIONS OF GUARANTEES.**—(1) The Secretary shall, before making, approving, or extending any guarantee or commitment to guarantee any obligation under this section, require the obligor to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to assure that, as long as any principal or interest is due and payable on such obligation, such obligor—

(A) will not make any discretionary dividend payments, except as provided in paragraph (2) of this subsection; and

(B) will not use any funds or assets from railroad operations for nonrail purposes, if such payments or use will impair the ability of such obligor to provide rail services in an efficient and economic manner or will adversely effect the ability of such obligor to perform any obligation guaranteed by the Secretary.

(2) An obligor shall not be restricted with respect to making dividend payments from its net income for any fiscal year, if such payments do not exceed—

(A) when compared to the net income of such obligor for such fiscal year, the ratio which aggregate dividends paid by such obligor, during the 5 fiscal years prior to the granting of the earliest loan guarantee then outstanding under this section bore to aggregate net income of such obligor for such period; or

(B) 50 per centum of the total additions to the retained income of such obligor (computed on a cumulative basis and giving cognizance to dividends paid) during the period commencing with the fiscal year prior to the granting of the earliest loan guarantee then outstanding under this section,

whichever is greater.

(3) The restrictions set forth in paragraphs (1) of this subsection shall not apply with respect to an obligation guaranteed under this section if, in the event of a default by the obligor, the Secretary would be subrogated to the rights of the lender under section 77(j) of the Bankruptcy Act.

(j) BREACH OF CONDITIONS.—The Attorney General shall commence a civil action in any appropriate district court of the United States to enjoin any activity which the Secretary finds is in violation of any requirement or condition specified in subsection (i) or (j) of this section, and to secure any other appropriate relief, including termination, suspension, and punitive damages.

(k) INVESTIGATION CHARGE.—The Secretary shall charge and collect from each applicant such amounts as he deems reasonable for the investigation of any application submitted under this section, for appraisal of the value of the equipment or facilities involved, and for making the necessary determinations and findings. Such charges shall not aggregate more than one-half of 1 percent of the principal amount of the obligation with respect to which the applicant seeks a guarantee or commitment to guarantee.

(l) PREMIUM CHARGE.—The Secretary shall assess and collect from the obligor an annual premium charge on each obligation guaranteed under this section. The amount of such premium may not exceed an annual rate of 1 percent on the unpaid principal balance of such obligation at the time payment is due. Payment is due initially when the obligation is guaranteed by the Secretary, and, thereafter, on the anniversary date of such guarantee.

(m) ADMINISTRATIVE COSTS.—All moneys received by the Secretary under this section shall be deposited in the obligation guarantee fund, and to the extent provided in appropriation acts, may be used by the Secretary to pay administrative costs and expenses incurred by him pursuant to this section.

ISSUANCE OF NOTES OR OBLIGATIONS

SEC. 512. (a) AUTHORIZATION.—The Secretary may issue, in such amounts as are provided in appropriation acts, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary may prescribe. Such obligations may be issued whenever the moneys in the obligation guarantee fund are not sufficient to pay any amount which the Secretary is required to pay under section 513 of this title. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury shall purchase any such obligations, and for such purpose he may use as a

public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may sell any such obligations at such times and price and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such obligations by such Secretary shall be treated as public debt transactions of the United States. Moneys obtained under this subsection shall be deposited in the obligation guarantee fund, and redemptions of any such obligations shall be made by the Secretary from such fund.

(b) **VALIDITY.**—No guarantee or commitment to guarantee under section 511 of this title may be terminated, suspended, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Secretary. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of such sections of this title, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment to guarantee shall be valid and incontestable in the hands of the holder thereof, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(c) **DEFINITION.**—As used in this section, the term "Secretary of the Treasury" includes any designated representative of such Secretary.

DEFAULT ON GUARANTEED OBLIGATIONS

SEC. 513. (a) GENERAL.—If there is a default by the obligor in any payment of principal or interest due under an obligation guaranteed under section 511 of this title, and if such default continues for 30 days, the holder of such obligation or his agent has the right to demand payment by the Secretary of the unpaid interest on, and the unpaid principal of, such obligation consistent with the terms of the guarantee of such obligation. Such payment may be demanded after or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 90 days from the date of such default. Within such specified period, but not later than 60 days from the date of such demand, the Secretary shall pay to such holder the unpaid interest on, and the unpaid principal of, such obligation, consistent with the terms of the guarantee of such obligation, except that (1) the Secretary shall not be required to make any such payment if he finds, prior to the expiration of such period, that there was no default by the obligor in the payment of interest or principal or that such default has been remedied, and (2) no such holder shall receive payment or be entitled to retain payment in a total amount which, together with an other recovery (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(b) **RIGHTS OF THE SECRETARY.**—(1) If the Secretary makes payment to a holder under subsection (a) of this section, the Secretary shall thereupon—

(A) have all of the rights granted to him by law or agreement with the obligor; and

(B) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement between such holder and the obligor.

(2) The Secretary may, in his discretion, complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained by him pursuant to this section. The terms of any such sale or other disposition shall be as approved by the Secretary.

(c) **FORM OF PAYMENT.**—Any amount required to be paid by the Secretary pursuant to subsection (a) of this section shall be paid in cash.

(d) **ACTION AGAINST OBLIGOR.**—If there is a default by the obligor in any payment due under an obligation guaranteed under section 511 of this title, the Secretary shall take such action against such obligor or any other person as is, in his discretion, necessary or appropriate to protect the interests of the United States. Such an action may be brought in the name of the United States or in the name of the holder of such obligation. Such holder shall make available to the Secretary all records and evidence necessary to prosecute any such suit. The Secretary may, in his discretion, accept a conveyance of property in full or partial satisfaction of any sums owed to him. If the Secretary receives, through the sale of property, an amount greater than his cost and the amount paid to the holder under subsection (a) of this section, he shall pay such excess to the obligor.

AUDIT OF TRANSACTIONS

SEC. 514. (a) GENERAL.—The Comptroller General of the United States is authorized to audit the operations of the Fund and of the obligation guarantee fund in accordance with such rules and regulations as he may prescribe. Any such audit shall be conducted at the place or places where accounts of the Fund or of the obligation guarantee fund are normally kept. The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with the Fund, the obligation guarantee fund, or the Secretary which pertain to the financial transactions of the Fund or the obligation guarantee fund and which are necessary to facilitate an audit. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, things, and property shall remain in the possession and custody of the Fund, the obligation guarantee fund, or the Secretary, as the case may be.

(b) **ACCESS TO INFORMATION.**—The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any person or entity which has entered into a financial transaction with or involving the Fund, the obligation guarantee fund, or the Secretary, under this title, to the extent deemed necessary by the Comptroller General to facilitate any audit of financial transactions pursuant to subsection (a) of this section. Such representatives shall be afforded full facilities for verifying transactions with the balances

or securities held by depositories, fiscal agents, and custodians. All such property of such person or entity shall, to the extent practicable, remain in the possession and custody of such person or entity.

(c) **REPORT.**—The Comptroller General shall make a report of each such audit to the Congress. Such report shall contain all comments and information which the Comptroller General deems necessary to inform Congress of the financial operations and condition of the Fund and of the obligation guarantee fund and any recommendations which he deems advisable. Such report shall indicate specifically and describe in detail any program, expenditure, or other financial transaction or undertaking observed in the course of such audit which the Comptroller General deems to have been carried on or made without lawful authority or which is inconsistent with the purposes and provisions of this title. A copy of such report shall be furnished to the President, the Secretary, and the Commission, at the time it is submitted to the Congress.

ANNUAL REPORT

SEC. 515. The Secretary shall report to the Congress within 90 days following the end of each fiscal year on the financial condition and operations of the Fund and of the obligation guarantee fund during such fiscal year, and on the anticipated condition and operations of the Fund and of the obligation guarantee fund during the current fiscal year.

EMPLOYEE PROTECTION

SEC. 516. (a) GENERAL.—Fair and equitable arrangements shall be provided, in accordance with this section, to protect the interests of any employees not otherwise protected under title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.), who may be affected by actions taken pursuant to authorizations or approval obtained under this title. Such arrangements shall be determined by the execution of an agreement between the representatives of the railroads and the representatives of their employees, within 120 days after the date of enactment of this title. In the absence of such an executed agreement, the Secretary of Labor shall prescribe the applicable protective arrangements, within 150 days after the date of enactment of this title.

(b) **TERMS.**—The arrangements required by subsection (a) of this section shall apply to each employee who has an employment relationship with a railroad on the date on which such railroad first applies for applicable financial assistance under this title. Such arrangements shall include such provisions as may be necessary for the negotiation and execution of agreements as to the manner in which the protective arrangements shall be applied, including notice requirements. Such agreements shall be executed prior to implementation of work funded from financial assistance under this title. If such an agreement is not reached within 30 days after the date on which an application for such assistance is approved, either party to the dispute may submit the issue for final and binding arbitration. The decision on any such arbitration shall be rendered within 30 days after such submission. Such arbitration decision shall in no way modify the protection

afforded in the protective arrangements established pursuant to this section, shall be final and binding on the parties thereto, and shall become a part of the agreement. Such arrangements shall also include such provisions as may be necessary—

(1) for the preservation of compensation (including subsequent general wage increases, vacation allowances, and monthly compensation guarantees), rights, privileges, and benefits (including fringe benefits such as pensions, hospitalization, and vacations, under the same conditions and so long as such benefits continue to be accorded to other employees of the employing railroad in active service or on furlough, as the case may be) to such employees under existing collective-bargaining agreements or otherwise;

(2) to provide for final and binding arbitration of any dispute which cannot be settled by the parties, with respect to the interpretation, application, or enforcement of the provisions of the protective arrangements;

(3) to provide that an employee who is unable to secure employment by the exercise of his or her seniority rights, as a result of actions taken with financial assistance obtained under this title, shall be offered reassignment and, where necessary, retraining to fill a position comparable to the position held at the time of such adverse effect and for which he is, or by training and retraining can become, physically and mentally qualified, so long as such offer is not in contravention of collective bargaining agreements relating thereto; and

(4) to provide that the protection afforded pursuant to this section shall not be applicable to employees benefited solely as a result of the work which is financed by funds provided pursuant to this title.

(c) SUBCONTRACTING.—The arrangements which are required to be negotiated by the parties or prescribed by the Secretary of Labor, pursuant to subsections (a) and (b) of this section, shall include provisions regulating subcontracting by the railroads of work which is financed by funds provided pursuant to this title.

INTERCITY RAIL PASSENGER SERVICE

SEC. 517. The Secretary is authorized, pursuant to the provisions of, and within the authorizations contained in, this title, to provide financial assistance, in the aggregate sum of up to \$200,000,000, to any railroad or railroads for the purpose of improving intercity rail passenger service on any lines of such railroad or railroads which are located outside of the Northeast Corridor (as defined in section 701 (c) of this Act).

TITLE VI—IMPLEMENTATION OF THE FINAL SYSTEM PLAN

GENERAL

SEC. 601. (a) Unless otherwise specified, whenever, in this title, an amendment or repeal is expressed in terms of an amendment to,

or a repeal of, a section or provision of "such Act", the section or other provision amended or repealed is a section of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(b) The table of contents of such Act is amended to read as follows:

"TABLE OF CONTENTS

"TITLE I—GENERAL PROVISIONS

"Sec. 101. Declaration of policy.

"Sec. 102. Definitions.

"TITLE II—UNITED STATES RAILWAY ASSOCIATION

"Sec. 201. Formation and structure.

"Sec. 202. General powers and duties of the Association.

"Sec. 203. Access to information.

"Sec. 204. Report.

"Sec. 205. Rail Services Planning Office.

"Sec. 206. Final system plan.

"Sec. 207. Adoption of final system plan.

"Sec. 208. Review by Congress.

"Sec. 209. Judicial review.

"Sec. 210. Obligations of the Association.

"Sec. 211. Loans.

"Sec. 212. Records, audit, and examination.

"Sec. 213. Emergency assistance pending implementation.

"Sec. 214. Authorization for appropriations.

"Sec. 215. Maintenance and improvement of plant.

"Sec. 216. Purchase of debentures and series A preferred stock.

"TITLE III—CONSOLIDATED RAIL CORPORATION

"Sec. 301. Formation and structure.

"Sec. 302. Powers and duties of the Corporation.

"Sec. 303. Valuation and conveyances of rail properties.

"Sec. 304. Termination and continuation of rail services.

"Sec. 305. Continuing reorganization; supplemental transactions.

"Sec. 306. Certificates of value.

"Sec. 307. Protection of Federal funds.

"TITLE IV—LOCAL RAIL SERVICES

"Sec. 401. Findings and purposes.

"Sec. 402. Rail service continuation assistance.

"Sec. 403. Acquisition and modernization loans.

"TITLE V—EMPLOYEE PROTECTION

"Sec. 501. Definitions.

"Sec. 502. Employment offers.

"Sec. 503. Assignment of work.

"Sec. 504. Collective-bargaining agreements.

"Sec. 505. Employee protection.

"Sec. 506. Contracting out.

"Sec. 507. Arbitration.

"Sec. 508. Duties of acquiring and selling railroads.

"Sec. 509. Payment of benefits.

"TITLE VI—MISCELLANEOUS PROVISIONS

"Sec. 601. Relationship to other laws.

"Sec. 602. Annual evaluation by the Secretary.

"Sec. 603. Freight rates for recyclables.

"Sec. 604. Separability.

"Sec. 605. Duty of transferee."

(c) Section 202(a)(2) of such Act (45 U.S.C. 712(a)(2)) is amended to read as follows:

“(2) issue obligations under section 210 of this title; make loans under section 211 of this title; purchase or otherwise acquire or receive and hold and dispose of securities (whether debt or equity) of the Corporation under section 216 of this title and exercise all of the rights, privileges, and powers of a holder of any such securities; and issue certificates of value under section 306 of this Act;”.

(d) Section 303 of such Act (45 U.S.C. 743) is amended by adding at the end thereof the following new subsection:

“(e) **TRANSFER AND OTHER TAXES AND RECORDING FEES.**—All transfers or conveyances of rail properties (whether real, personal, or mixed) which are made under this Act (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to section 305 of this title) shall be exempt from any taxes, imposts, or levies now or hereafter imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills, of sale, liens, encumbrances, or other instruments and, consistent with the designations and applicable principles in the final system plan, to record the release or removal of any pre-existing liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.”.

(e) Section 208 of such Act (45 U.S.C. 718) is amended by adding at the end thereof the following new subsection:

“(d) **ADDITIONS.**—(1) The supplemental report, dated September 18, 1975, to the final system plan, and the provisions of the Association's official errata supplemental to the final system plan, dated December 1, 1975, including all designations made therein, shall be treated for all purposes as if they had been part of and included in the final system plan adopted by the Association and reviewed by the Congress. The final system plan shall, for all purposes, be deemed to be approved as modified and amended by such supplemental report and such supplement.

“(2) The Association may, upon petition of any State, modify the final system plan to make further designations with respect to rail properties of railroads in reorganization in the region designated for transfer to the Corporation under such plan, if such designations (A) are likely to result in improved rail service on such rail properties and connecting rail properties, and (B) would not materially impair the profitability of the Corporation. Such designations, including designations of such rail properties to a State, a profitable railroad, or a responsible person, may be made at any time prior to delivery of the final system plan to the special court under section 209(c) of this title. Such further designations shall be treated for all purposes as if they had been included in the final system plan adopted by the

Association and reviewed by the Congress, and the final system plan shall for all purposes be deemed to be approved as modified by such designations. Any action of the Association with respect to any such petition shall not be subject to review by any court.

“(3) (A) Within 20 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Association may, by notice to the Congress and by publication in the Federal Register, modify, supplement, or add to the designations of rail properties in the final system plan if the Association finds such actions are necessary to—

“(i) achieve the efficient implementation of the final system plan, or

“(ii) provide for the offer to profitable railroads of rail properties designated in the final system plan to the Corporation, if such properties are not essential in the operation of other rail properties of the Corporation but are or would be integrally related to the operation of rail properties of (or which are offered pursuant to the final system plan to) such profitable railroad, or

“(iii) provide for the designation of additional rail properties to the Corporation or to a subsidiary thereof to enable the Corporation to serve efficiently a line of railroad designated to the Corporation in the final system plan if such line does not connect with any other line of railroad so designated to the Corporation or if such line would be served more efficiently as a consequence of such designation.

Any designation to a profitable railroad pursuant to this paragraph shall comply with the second sentence of section 206(d)(4) of this title, and shall only be made upon a finding by the Association that such designation is integrally related to an offer of rail properties to a profitable railroad in the final system plan, that the goals of the final system plan require that the rail properties be operated as a part of the rail properties included in such offer, and that the implementation of such designation will not materially and adversely affect the impact of such offer on the profitability of the Corporation or any profitable railroad operating in the region. Any designation to a profitable railroad pursuant to this subsection, which amends any prior offer, shall terminate 30 days after the date of enactment of this paragraph unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such amendment to the prior offer.

“(B) If a line of railroad or any segment thereof is designated for rail service in the final system plan, no designation may be made by the Association pursuant to this paragraph which would result in such line or segment not being so designated. Any designations made pursuant to this paragraph shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress. The final system plan shall for all purposes be deemed to be approved as amended by such designations.

“(C) Any designations made pursuant to this paragraph shall not be subject to review by any court.

“(D) Any labor agreements entered into under section 508 of this Act shall be subject to further negotiations for any modifications

which may be necessary to implement designations made pursuant to this paragraph.”.

(f) Section 102(14) of such Act (45 U.S.C. 702(14)) is amended to read as follows:

“(14) ‘Secretary’ means the Secretary of Transportation or the person at the time performing the duties of the Office of the Secretary of Transportation in accordance with law, or the duly authorized representative of either of them;”.

(g) Section 102 of such Act (45 U.S.C. 702) is amended (1) by redesignating paragraphs (8) through (15) thereof as paragraphs (10) through (17) thereof, respectfully; and (2) by inserting therein a new paragraph (9) as follows:

“(9) ‘local or regional transportation authority’ includes a political subdivision of a State.”.

SPECIAL COURT

SEC. 602. (a) Section 209(b) of such Act (45 U.S.C. 719) is amended by striking out the sixth sentence thereof and inserting in lieu thereof the following new sentence: “The special court may issue rules for the conduct of any proceedings under this section and under section 305 of this Act, including rules with respect to the time within which motions may be filed, and with respect to appropriate representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 305).”.

(b) Section 209 of such Act (45 U.S.C. 719) is amended by adding at the end thereof the following three new subsections:

“(e) ORIGINAL AND EXCLUSIVE JURISDICTION.—(1) Notwithstanding any other provision of law, any civil action—

“(A) for injunctive or other relief against the Association from the enforcement, operation, or execution of this Act or any provision thereof, or from any action taken by the Association pursuant to authority conferred or purportedly conferred under this Act;

“(B) challenging the constitutionality of this Act or any provision thereof;

“(C) challenging the legality of any action of the Association, or any failure of the Association to take any action, pursuant to authority conferred or purportedly conferred under this Act;

“(D) to obtain, inspect, copy, or review any document in the possession or control of the Association that would be discoverable in litigation pursuant to section 303(c) of this Act;

“(E) brought after a conveyance, pursuant to section 303(b) of this Act, to set aside or annul such conveyance or to secure in any way the reconveyance of any rail properties so conveyed; or

“(F) with respect to continuing reorganization and supplemental transactions, in accordance with section 305 of this Act; shall be within the original and exclusive jurisdiction of the special court. The special court shall not hear or determine any such action prior to the date of conveyance, pursuant to section 303(b) (1) of this Act, except as the Constitution may require. Relief shall not be granted in any action referred to in subparagraph (A), (C), or (E) unless

the person seeking such relief establishes that the Association acted in reckless or deliberate disregard of applicable law.

“(2) The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify, or implement any of the orders entered by such court pursuant to section 303(b) of this Act in order to effect the purposes of this Act or the goals of the final system plan. During the pendency of any proceeding described in this paragraph, the special court may enter such orders as it determines to be appropriate, including orders enjoining, restraining, conditioning, or limiting any conveyance, transfer, or use of any asset or right which is subject to such an order or which is at issue in such a proceeding, or which involves the enforcement of any liens or encumbrances upon such assets or rights. Any orders pursuant to this paragraph which interpret, alter, amend, modify, or implement orders entered by the special court shall be final and shall not be restrained or enjoined by any court.

“(3) A final order or judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States, except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of this Act, in whole or in part, or of any action taken under this Act, shall be reviewable by direct appeal to the Supreme Court of the United States in the same manner that an injunctive order may be appealed under section 1253 of title 28, United States Code. Such review is exclusive and any petition or appeal shall be filed not more than 20 days after entry of such order or judgment.

“(f) DISPOSITION OF CASH DEPOSITS.—Whenever the compensation which is deposited with the special court under section 303(a) of this Act is in the form of cash, such cash shall be invested and reinvested upon such terms and conditions as the special court shall determine, pending the making of the findings referred to in paragraphs (1), (2), and (3) of section 303(c) of this Act. Notwithstanding section 303(c) (4) of this Act, the special court may order (1) the income from such investments (2), the dividends or interest, if any, received on any securities or obligations deposited with the special court under such section 303(a), and (3) the income, if any, received with respect to any other form of compensation so deposited, to be distributed to the trustee of each railroad in reorganization and to any person leased, operated or controlled by such a railroad which conveyed the right, title, and interest in the rail properties with respect to which such cash, securities, obligations, or other compensation have been so deposited with the special court. Notwithstanding section 303(c) (4) of this Act, the special court may, within 90 days after the date of conveyance of rail properties pursuant to section 303(b) of this Act, order up to 25 percent of any cash (including investments made with cash) and other compensation deposited with the special court to be distributed to such trustee or person. On petition of the applicable trustee or person, the special court may order such additional distributions as it finds reasonable and appropriate, prior to the making of the findings referred to in paragraphs (1), (2), and (3) of such section 303(c).

“(g) **STAY OF COURT PROCEEDINGS.**—The special court may stay or enjoin any action or proceeding in any State court or in any court of the United States other than the Supreme Court if such action or proceeding is contrary to any provision of this Act, impairs the effective implementation of this Act, or interferes with the execution of any order of the special court pursuant to this Act.”.

FINANCE COMMITTEE

SEC. 603. (a) Section 201 of such Act (45 U.S.C. 711) is amended by redesignating subsections (i) and (j) thereof as subsections (j) and (k) thereof, respectively, and by inserting therein a new subsection “(i)” as follows:

“(i) **FINANCE COMMITTEE.**—The Board of Directors of the Association shall have a Finance Committee which shall consist of the Chairman of such Board, the Secretary, and the Secretary of the Treasury (acting directly or, at any time, through their respective duly authorized representatives). The Finance Committee is authorized to exercise only such powers as are vested in it pursuant to any provision of this Act. The vesting of such powers in the Finance Committee shall not be deemed to relieve the Board of Directors of its authority to exercise any other powers of the Association, none of which may be delegated to the Finance Committee, or of its general authority to study, analyze, and make advisory findings with respect to any matter relevant to the role of the Association as an investor in securities of the Corporation. Notwithstanding any provision of State law, (1) the Finance Committee, without any requirement of review or approval by the Board of Directors of the Association, is authorized to establish, revise, and maintain its own rules and procedures, by majority vote of the members thereof, and (2) the Board of Directors of the Association shall not have power to take, and shall not take, any action affecting the membership of the Finance Committee or limiting the exercise by the Finance Committee of the powers vested in it pursuant to any provision of this Act.”.

(b) (1) Section 201(h) of such Act (45 U.S.C. 711(h)) is amended by adding at the end thereof the following new sentence: “The Secretary and the Chairman of the Commission may act in such capacity directly or at any time through their duly authorized representatives.”

(2) Sections 201(d)(2) of such Act (45 U.S.C. 711(d)(2)) is amended by striking “or” and inserting in lieu thereof the following: “acting directly or at any time through”.

(c) Section 102 of such Act (45 U.S.C. 702), as amended by this Act, is amended by redesignating paragraph (7) thereof as paragraph (8) thereof, and by inserting therein a new paragraph (7) as follows:

“(7) ‘Finance Committee’ means the Finance Committee of the Board of Directors of the Association established under section 201(i) of this Act;”.

OBLIGATIONS OF THE ASSOCIATION

SEC. 604. Section 210(b) of such Act (45 U.S.C. 720(b)) is amended to read as follows:

“(b) **MAXIMUM OBLIGATIONAL AUTHORITY.**—The aggregate amount of obligations of the Association issued under this section which may

be outstanding at any one time shall not exceed \$275,000,000. No obligations or proceeds thereof shall be issued or made available after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 except—

“(1) to meet existing or potential commitments for loans under section 211 of this title made or applied for prior to January 1, 1976; and

“(2) for the purpose of providing loans pursuant to subsections (g) and (h) of section 211 of this title.”.

DEBENTURES AND SERIES A PREFERRED STOCK

SEC. 605. Title II of such Act is amended by adding at the end thereof the following new section:

“DEBENTURES AND SERIES A PREFERRED STOCK

“SEC. 216. (a) GENERAL.—The Association is authorized, in accordance with the provisions of this section, and such rules and regulations as it may prescribe, to invest from time to time in the securities of the Corporation by purchasing (1) up to \$1,000,000,000 of debentures issued by the Corporation, and (2) after the acquisition of such debentures, up to \$1,100,000,000 of the series A preferred stock of the Corporation.

“(b) PURPOSES AND PROCEDURE FOR INVESTMENT.—(1) The Association is authorized to purchase debentures and, thereafter, series A preferred stock of the Corporation at such times and in such amounts as may be required and requested by the Corporation in accordance with the terms and conditions governing such purchases (which shall be prescribed by the Association), to provide—

“(A) for the modernization, rehabilitation and maintenance of rail properties of the Corporation;

“(B) for the acquisition of equipment and other capital needs;

“(C) for the refinancing of indebtedness which was incurred by the Corporation under section 211 of this title or which was incurred under section 215 of this title and assumed by the Corporation; or

“(D) working capital as contemplated by the final system plan.

“(2) Purchases of up to \$1,000,000,000 of debentures and, thereafter, of up to \$1,100,000,000 of series A preferred stock shall be made by the Association as required and requested by the Corporation, unless the Finance Committee makes an affirmative finding that—

“(A) the Corporation has failed in any material respect to comply with any covenants or undertakings made to the Association and such failure remains uncorrected;

“(B) the Corporation has failed substantially (as determined by performance within the margins prescribed by the Board of Directors) to attain the overall operating (including rehabilitation) and financial results projected for the Corporation in the final system plan (including any modifications of such projected results and of the performance margins applicable to such projected results which are jointly approved by the Finance Committee and the Board of Directors and which would improve the

possibility that the Corporation will attain such projected results and perform within such margins, as modified) ; or

“(C) it is not reasonably likely, taking into consideration all relevant factors including the overall operating (including rehabilitation) and financial results achieved by the Corporation, that the Corporation will be able to become financially self-sustaining without requiring Federal financial assistance substantially in excess of the amounts authorized in this section.

“(c) FINDING, DIRECTION, AND REVIEW BY CONGRESS.—(1) If the Finance Committee makes an affirmative finding pursuant to subsection (b) (2) of this section, it may direct the Association—

“(A) not to purchase any debentures or series A preferred stock of the Corporation after the date of such affirmative finding; or

“(B) to purchase debentures or series A preferred stock of the Corporation, after the date of such affirmative finding, only in such amounts, at such times, and on such terms and conditions (notwithstanding subsection (e) (1) of this section) as the Finance Committee determines to be appropriate to the role of the Association as an investor in such debentures and series A preferred stock.

“(2) A copy of each affirmative finding, the reasons therefor, and each direction made by the Finance Committee under paragraph (1) of this subsection, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such direction so transmitted shall become finally effective and is required to be implemented by the Association, unless within the first period of 30 calendar days of continuous session of Congress after the date of its transmittal to Congress either House of Congress disapproves such direction (except that such direction shall become finally effective immediately upon approval of such direction by both Houses of Congress) in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act (31 U.S.C. 1401(5)). During review by the Association and Congress, the Association shall take no action inconsistent with the direction of the Finance Committee pursuant to paragraph (c) (1) of this section, except to the extent the Association finds necessary, in its discretion, to assure continuous orderly operation of the Corporation.

“(3) If the Congress, pursuant to paragraph (2) of this subsection, disapproves a direction submitted to the Association pursuant to paragraph (1) of this subsection, the Association shall continue to purchase the debentures or series A preferred stock of the Corporation as otherwise provided in this title until such time as a direction is submitted under this section which is not so disapproved (or affirmatively approved). The powers of the Association and of the Board of Directors of the Association shall remain in effect except to the extent modified by any such direction. If any such direction is dis-

approved by either House of Congress, the Finance Committee may, not earlier than 30 days after the date of such disapproval, make (and the Board of Directors of the Association shall transmit) any additional affirmative finding and direction with respect to the same matter, which direction shall become effective in accordance with paragraph (2) of this subsection. An affirmative finding and direction under this subsection, or action by the Association during a review thereof by the Congress, may not be held unlawful or set aside by any reviewing court on the ground that such finding and direction or action were not adequate to meet the requirements of subparagraph (A), (E), or (F) of section 706(2) of title 5, United States Code.

“(4) Notwithstanding any other provision of this section, or any terms and conditions governing its purchase of securities of the Corporation, the Association shall, upon written application by the Corporation at least 30 days prior to such investment, make an initial investment in debentures of the Corporation within 60 days after the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act. Such initial investment shall be limited to such amounts as the Association and Finance Committee, acting jointly, determine are necessary for the continued and orderly operations of the Corporation prior to any additional investment.

“(5) Not later than 60 days after the date of conveyance pursuant to section 303(b)(1) of this Act, the Association shall select 6 individuals to serve as members of the Board of Directors of the Corporation, subject to the provisions of section 301(d) of this Act.

“(d) **TERMS AND CONDITIONS.**—Notwithstanding any other provision of State law, the debentures and the series A preferred stock of the Corporation shall have such terms and conditions, not inconsistent with the final system plan or this title, as may be prescribed by the Association, except as follows:

“(1) The Corporation shall not be required to issue to the Association additional shares of series A preferred stock of the Corporation as a dividend on any such stock.

“(2) The dividends payable on series A preferred stock of the Corporation shall not be cumulative and shall be paid in cash when and to the extent that there is ‘cash available for restricted cash payments’, as that term is defined in the final system plan.

“(3) After the Association calls for redemption of the certificates of value, no shares of series A preferred stock of the Corporation shall be issued in lieu of interest on the debentures of the Corporation and, to the extent such interest is not payable in cash by reason of the absence of sufficient ‘cash available for restricted cash payment’, the Corporation shall deliver to the holders of the debentures contingent interest notes in a face amount equal to such unpaid interest.

“(4) If the Board of Directors of the Association and the Finance Committee, acting jointly, modify the terms or conditions governing the purchase of debentures or series A preferred stock of the Corporation pursuant to subsection (e)(1) of this section, or if the Finance Committee waives compliance with any term, condition, provision, or covenant of such securities pursuant to subsection (e)(2) of this section, the Finance Committee may require the Corporation to issue contingent interest notes in such

amount as, in the determination of the Finance Committee, will provide protection for the United States, in the event of bankruptcy, reorganization, or receivership of the Corporation, equal to the protection the United States would have had in the absence of such modification or waiver.

“(5) The contingent interest notes issued pursuant to this section shall bear interest compounded annually at the rate of 8 percent per annum and such notes and the accumulated interest thereon shall be payable only in the event of bankruptcy, reorganization, or receivership of the Corporation occurring prior to the repayment and redemption of all outstanding debentures and accumulated series A preferred stock of the Corporation. The contingent interest notes and the accumulated interest thereon shall have the same priority in bankruptcy, reorganization, or receivership as the debentures of the Corporation. The other terms and conditions of the contingent interest notes shall be as set forth in an agreement to be entered into between the Association and the Corporation prior to issuance of any debentures.

“(e) MODIFICATIONS, WAIVERS, AND CONVERSIONS.—(1) The Board of Directors of the Association and the Finance Committee, acting jointly, may agree with the Corporation to modify any of the terms and conditions governing the purchase by the Association of securities of the Corporation, upon a finding that such action is necessary or appropriate to achieve the purposes of this Act or the goals of the final system plan.

“(2) The Finance Committee may, in its discretion and upon a finding that such action is necessary or appropriate to achieve the purposes of this Act or the goals of the final system plan, waive compliance with any term, condition, provision, or covenant of the securities of the Corporation held by the Association, including any provision of such securities with respect to redemption of principal or issuance price, payment of interest or dividends, or any term or condition governing the purchase of such securities.

“(3) Notwithstanding any provision of State law, there shall be no conversion of the debentures of the Corporation into series A preferred stock of the Corporation, as provided in the terms and conditions of the debentures and pursuant to the final system plan, unless the Board of Directors of the Association and the Finance Committee jointly determine to effect such conversion.

“(f) APPROPRIATION.—There is authorized to be appropriated to the Association \$2,100,000,000 to be used for the purchase of securities of the Corporation in accordance with this section. All sums received by the Association on account of the holding or disposition of any such securities shall be deposited in the general fund of the Treasury.”.

LOANS

SEC. 606. Section 211 of such Act (45 U.S.C. 741) is amended by adding at the end thereof the following new subsections:

“(g) PRE-CONVEYANCE LOANS TO THE CORPORATION.—During the period between the effective date of the final system plan and the date of the conveyance of rail properties pursuant to section 303(b) of this Act, the Association may make such loans in such amounts to

the Corporation as the Association deems essential to provide for the purchase by the Corporation of material, supplies, equipment, and services necessary to permit the orderly and efficient implementation of the final system plan. Notwithstanding any inability of the Association during such period to make the finding required by subsection (e)(3) of this section because of any existing contingencies, the Association may make any such loans to the Corporation, subject to—

“(1) the most favorable terms and conditions for assuring timely repayment and security as may then be reasonably available, and

“(2) the requirement that any loan to the Corporation under this subsection be refinanced immediately out of the proceeds of the first sale by the issuance of debentures under section 216 of this title.

In order to assure that necessary funds are available to the Corporation for implementation of the final system plan, the Corporation is authorized to accept such loans as may be approved by the Association under this subsection, and any such acceptance shall be deemed for all purposes to constitute a reasonable and prudent business judgment in compliance with any fiduciary obligations imposed on the Corporation or its directors. For purposes of this subsection, the term ‘Corporation’ includes a subsidiary of the Corporation.

“(h) LOANS FOR PAYMENT OF OBLIGATIONS.—(1) The Association is authorized, subject to the limitations set forth in section 210(b) of this title, to enter into loan agreements, in amounts not to exceed \$230,000,000 in the aggregate, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of this Act, under which the Corporation, the National Railroad Passenger Corporation, and any profitable railroad entering into such agreement will agree to meet existing or prospective obligations of the railroads in reorganization in the region which the Association, in accordance with procedures established by the Association, determines should be paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, on behalf of the transferors, in order to avoid disruptions in ordinary business relationships. Such obligations shall be limited to amounts claimed by suppliers (including private car lines) of materials or services utilized in current rail operations, claims by shippers arising from current rail services, payments to railroads for settlement of current interline accounts, claims of employees arising under the collective bargaining agreements of the railroads in reorganization in the region and subject to section 3 of the Railway Labor Act, claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers’ Liability Acts (45 U.S.C. 51–60), and amounts required for adequate funding of accrued pension benefits existing at the time of a conveyance or discontinuance of service under employee pension benefit plans described in section 505(a) of this Act. The Association shall not make such a loan unless it first finds that the loan is for the purpose of paying obligations with respect to accrued pension plans referred to in the preceding sentence or that the Corporation, the National Railroad Passenger Corporation, or a profitable

railroad is entitled to a loan pursuant to subsections (e) and (g) of section 504 of this Act, or unless it first finds that—

“(A) provision for the payment of such obligations was not included in the financial projections of the final system plan;

“(B) such obligations arose from rail operations prior to the date of conveyance of rail properties pursuant to section 303(b) (1) of this Act and are, under other applicable law, the responsibility of a railroad in reorganization, in the region;

“(C) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligations by the Corporation, the National Railroad Passenger Corporation or profitable railroad is necessary to avoid disruptions in ordinary business relationships;

“(D) the transferor is unable to pay such obligations within a reasonable period of time; and

“(E) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from the railroads in reorganization in the region for obligations paid on their behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation.

“(2) The trustees of each railroad in reorganization in the region shall attempt to negotiate agency agreements with the Corporation, the National Railroad Passenger Corporation, or a profitable railroad for the processing of all accounts receivable and accounts payable attributable to operations prior to the conveyance of property pursuant to section 303(b) (1) of this Act. If any railroad in reorganization in the region fails to conclude such an agreement within a reasonable time prior to such conveyance, the applicable reorganization courts, after giving all parties an opportunity to be heard, shall prescribe the terms of such an agency arrangement by order, giving due consideration to the need, wherever possible, to make such agreements uniform among the various estates.

“(3) The Association may, not less than 30 days prior to the date of conveyance pursuant to section 303(b) (1) of this Act, petition each district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region for an order, which shall be entered prior to such conveyance, and which—

“(A) identifies that cash and other current assets of the estate of such railroad which shall be utilized to satisfy obligations of the estates identified in paragraph (1) of this subsection; and

“(B) provides for the application by the trustees of such railroads and their agents, consistent with the principles of reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) and with the agency agreement specified in paragraph (2) of this subsection, of all such current assets, including cash available as of or subsequent to such date of conveyance, to the payment in the postconveyance period of the obligations of the estates identified in paragraph (1) of this subsection.

“(4) (A) Each obligation of a railroad in reorganization in the region which is paid with financial assistance under paragraph (1) of this subsection shall be processed, on behalf of such railroad, by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate. An obligation of a railroad

in reorganization in the region shall be paid, on behalf of such railroad, by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate, if—

“(i) such obligation is deemed by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate, to have been, on the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act, the obligation of a railroad in reorganization in the region;

“(ii) such obligation accrues after such date of conveyance but as a result of rail operations conducted prior to such date, and the trustees of such railroad in reorganization acknowledge that it is an obligation of such railroad; or

“(iii) the district court of the United States having jurisdiction over such railroad in reorganization in the region approves such obligation as a valid administrative claim against such railroad; to the extent that payment is required under a loan agreement with the Association under such paragraph (1).

“(B) The Association shall resolve any disputes among the Corporation, the National Railroad Passenger Corporation, and a profitable railroad concerning which of them shall process and pay any particular obligation on behalf of a particular railroad in reorganization.

“(C) The Corporation, the National Railroad Passenger Corporation, or a profitable railroad shall have a direct claim, as a current expense of administration, for reimbursement from the estate of a railroad in reorganization in the region for all obligations of such estate (plus interest thereon) which are paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, as the case may be. The right of the Corporation or the National Railroad Passenger Corporation to receive reimbursement under this subparagraph from the estate of a railroad in reorganization in the region shall be reduced by the amount, if any, of loans, plus interest forgiven under paragraph (5) of this subsection.

“(5)(A) If, at any time, the Finance Committee of the Association determines that the failure of the Corporation to receive full reimbursement with interest from the estate of a railroad in reorganization in the region for any obligation of such estate paid pursuant to this subsection could adversely affect the fairness and equity of the transfers and conveyances pursuant to section 303(b)(1) of this Act, or that the failure of the National Railroad Passenger Corporation to receive such full reimbursement plus interest for any such obligation would be contrary to the public interest, the Association shall forgive the indebtedness, plus accrued interest, of the Corporation or of the National Railroad Passenger Corporation incurred pursuant to paragraph (1) of this subsection in the amount recommended by the Finance Committee. The Association shall have a direct claim, as a current expense of administration of the estate of such railroad in reorganization, equal to the amount by which loans of the Corporation or of the National Railroad Passenger Corporation, plus interest, have been forgiven. Such direct claim shall not be subject to any reduction by way of setoff, cross-claim, or counter-claim which the estate of such railroad in reorganization may be entitled to assert against the Corporation, the National Railroad Passenger Corporation, the Association, or the United States.

“(B) The direct claim of the Association under this paragraph, and any direct claim authorized under paragraph (4) of this subsection, shall be prior to all other administrative claims of the estate of a railroad in reorganization, except claims arising under trustee’s certificates or from default on the payment of such certificates.

“(6) Notwithstanding any other provision of this subsection, the Association shall forgive any loan made to the Corporation or the National Railroad Passenger Corporation pursuant to this subsection, plus accrued interest thereon, on the 3rd anniversary date of any such loan, except that the Association shall not forgive any loan or portion thereof, in accordance with this paragraph, if—

“(A) the Finance Committee makes an affirmative finding, with respect to such loan or portion thereof, that—

“(i) the Corporation has not exercised due diligence in executing the procedures adopted pursuant to paragraph (1) (E) of this subsection, and

“(ii) the failure of the Association to forgive such loan or portion thereof will not adversely affect the ability of the Corporation to become financially self-sustaining;

“(B) the Finance Committee so directs the Association; and

“(C) neither House of the Congress disapproves such affirmative finding and direction”, in accordance with the following provisions of this paragraph.

A copy of each such finding, the reasons therefor, and such direction made by the Finance Committee, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such finding and direction so transmitted shall become effective immediately, and shall remain in effect, unless, within the first period of 30 calendar days of continuous session of Congress after the date of transmittal of such finding and direction to Congress, either House of Congress disapproves such finding and direction in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011 (5) of that Act (31 U.S.C. 1401 (5)).

“(7) For purposes of this subsection, the term ‘Corporation’ includes a subsidiary of the Corporation.

“(i) **ELECTRIFICATION.**—Upon application by the Corporation, the Secretary shall, pursuant to the provisions of and within the obligatory limitations contained in sections 511 through 513 of the Railroad Revitalization and Regulatory Reform Act of 1976, guarantee obligations of the Corporation for the purpose of electrifying high-density mainline routes if the Secretary finds that such electrification will return operating and financial benefits to the Corporation and will facilitate compatibility with existing or renewed electrification systems. The aggregate unpaid principal amount of obligations which may be guaranteed by the Secretary under this paragraph shall not exceed \$200,000,000 at any one time.”.

MISCELLANEOUS AMENDMENTS TO TITLE II

SEC. 607. (a) Section 201(j) of such Act (45 U.S.C. 711(j)), as redesignated by section 603(a) of this Act, is amended by adding at the end thereof the following new paragraph:

“(4) Any reference in this Act to the Secretary of the Treasury is to the Secretary of the Treasury or the person at the time performing the duties of the Office of the Secretary of the Treasury in accordance with law, or the duly authorized representative of either of them. Any reference in this Act to the Chairman of the Commission is to the Chairman of the Commission or the person at the time performing the duties of the Chairman of the Commission in accordance with law, or the duly authorized representative of either of them.”.

(b) Section 202(e) of such Act (45 U.S.C. 712(e)) is amended by inserting after “obligations issued” and before “and loans” in clause (4) thereof the following: “, certificates of value issued, securities purchased,”.

(c) Section 202(f) of such Act (45 U.S.C. 712(f)) is amended by inserting after “section” and before “)” in the first sentence thereof the following: “and receipts and disbursements under section 216 of this title and section 306 of this Act.”.

(d) Section 203(a) of such Act (45 U.S.C. 713(a)) is amended by striking out the last sentence thereof.

(e) Section 206(d)(3) of such Act (45 U.S.C. 716(d)(3)) is amended by inserting after the first sentence thereof the following three new sentences: “All determinations made by the Association in the correction to the preliminary system plan published on April 11, 1975 (40 Fed. Reg. 16377), shall be treated for all purposes as if they had been made upon adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to such correction shall be treated for all purposes as if they had been made within 90 days after adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to acquisitions by profitable railroads referred to in any supplement to the preliminary system plan published under section 207(b)(2) of this title shall be deemed to be timely if made prior to the adoption of the final system plan under section 207(c) of this title.”.

(f) Section 206(c)(1)(B) of such Act (45 U.S.C. 716(c)(1)(B)) is amended by inserting immediately after “paragraph” the following: “and what alternative designations shall be made under this paragraph”.

(g) Section 206(c)(1)(A) of such Act (45 U.S.C. 716(c)(1)(A)) is amended by striking out the semicolon and inserting in lieu thereof the following: “: *Provided*, That the Corporation shall, within 95 days after the effective date of the final system plan, give notice to the Association of which such rail properties, if any, are to be transferred to a subsidiary of the Corporation in the event that the Board of Directors of the Association finds that such transfer would be consistent with the final system plan;”.

(h) Section 206(c)(2) of such Act (45 U.S.C. 716(c)(2)) is amended by adding at the end thereof the following new sentence:

"Any rail properties designated to be offered for sale to the Corporation may be sold instead to a subsidiary of the Corporation."

(i) Sections 206(d) (1), 209 (c) and (d), 215(d), 304(e), and 501 (1) and (2) of such Act (45 U.S.C. 716(d) (1), 719 (c), and (d), 744 (e), and 771 (1) and (2)) are amended by inserting after "Corporation" each time it appears the following: "or any subsidiary thereof".

(j) Section 206(c) (1) (D) of such Act (45 U.S.C. 716(c) (1) (D)) is amended by—

(1) inserting immediately after "by" the following "(i)"; and

(2) striking out "; and" at the end thereof and adding the following: ", or (ii) the National Railroad Passenger Corporation to meet the needs of improved rail passenger service over intercity routes, other than properties designated pursuant to subparagraph (C) of this paragraph; and".

(k) Section 210(c) of such Act (45 U.S.C. 720(c)) is amended by adding at the end thereof the following new sentence: "All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States for the payment of which its full faith and credit are pledged."

(l) Section 209(c) of such Act (45 U.S.C. 719(c)) is amended by striking out "obligations of the Association" each time it appears and inserting in lieu thereof "certificates of value of the Association".

(m) (1) Subsection (b) of section 214 of such Act (45 U.S.C. 724(b)) is amended by striking out "\$5,000,000" and inserting in lieu thereof "\$7,000,000".

(2) Section 214(c) of such Act is amended by striking out the period and inserting in lieu thereof ", and not to exceed \$14,000,000 for the fiscal period which includes the period ending September 30, 1977."

(n) Section 214(a) of such Act (45 U.S.C. 724(a)) is amended by adding at the end thereof the following: "There are authorized to be appropriated to the Secretary such sums as may be necessary to discharge the obligations of the United States arising under section 303 (c) (5) of this Act."

(o) Paragraph (4) of section 206(d) of such Act (45 U.S.C. 716 (d) (4)) is amended—

(1) in the first sentence thereof, by striking out "30 days after the effective date of the final system plan" and inserting in lieu thereof "7 days after the date of the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976"; and in the second sentence thereof, by striking out "60" and inserting in lieu thereof "95"; and

(2) by inserting immediately after the first sentence thereof the following new sentence: "Any such offer may be modified until the date of acceptance thereof, unless such modification results in an offer for the sale of rail properties at less than the net liquidation value thereof."

(p) Section 206(d) of such Act (45 U.S.C. 716(d)) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any statement to the contrary in the final system plan, a State (or a local or regional transportation authority) shall not be required to deliver to the Corporation a firm commitment to acquire rail properties designated to such State or

authority prior to 7 days after the date of enactment of this paragraph.”.

(q) Section 206 of such Act (45 U.S.C. 717(c)) is amended by adding at the end thereof the following new subsection:

“(j) Any rail properties over which rail service was being provided as of the date of enactment of this Act, and which were recommended in the preliminary system plan for transfer to the Corporation, shall be deemed to be designated in the final system plan for transfer to the Corporation under subsection (c)(1)(A) of this section. Any designation in the final system plan, pursuant to subsection (c)(1)(B) of this section, of overhead trackage rights to be acquired by a profitable railroad operating in the region over specified rail properties to be acquired by the Corporation, where such designation does not (1) authorize such profitable railroad to interchange traffic with at least one railroad, or (2) provide for the connection of portions of such profitable railroad’s rail properties, and where the transfer of ownership of such rail properties (including trackage rights) to such profitable railroad was recommended in the preliminary system plan, and the Commission has made a determination with respect thereto, in accordance with subsection (d)(3) of this section, shall be deemed to authorize such profitable railroad to interchange traffic with the Corporation and any other profitable railroad connecting with such specified rail properties.”.

(r) Section 209(c) of such Act (45 U.S.C. 719(c)) is amended by adding at the end thereof, without paragraph indentation, the following new sentences: “Notwithstanding any other provisions of this subsection and subsection (d) of this section, the time for the delivery of a certified copy of the final system plan shall be March 12, 1976, and may be extended to a date not more than 30 days thereafter, prescribed in a notice filed by the Association not later than February 10, 1976, with the special court, the Congress, and each court referred to in such subsection (d). Such notice shall contain the certification of the Association that an orderly conveyance of rail properties cannot reasonably be effected before the date for conveyance determined with respect to such notice. The time prescribed in section 303(a) of this Act shall be determined with respect to the date prescribed in such notice.”.

(s) Section 209(c) (1) and (2) of such Act (45 U.S.C. 719(c) (1) and (2)) is amended by striking out “railroad leased” each time it appears therein and inserting in lieu thereof “person leased”.

(t) Section 102(12) of such Act (45 U.S.C. 702(12)), as redesignated by this Act, is amended (1) by inserting immediately before “which are used or useful” the following: “(or a person owned, leased, or otherwise controlled by a railroad)”; and (2) by striking out “phase” and inserting in lieu thereof “phrase”.

CAPITALIZATION OF THE CORPORATION

SEC. 608. Section 301(e) of such Act (45 U.S.C. 741(e)) is amended to read as follows:

“(e) INITIAL CAPITALIZATION.—(1) In order to carry out the final system plan, the Corporation is authorized to issue debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities.

"(2) Debentures and series A preferred stock shall be issued initially to the Association. Series B preferred stock and common stock shall be issued initially to the estates of railroads in reorganization in the region, to railroads leased, operated, and controlled by railroads in reorganization in the region, and to other persons leased, operated or controlled by a railroad in reorganization who are transferors of rail properties in exchange for rail properties transferred to the Corporation pursuant to the final system plan. Notwithstanding any other provisions of State or Federal law, the series B preferred stock and common stock shall have terms and conditions not inconsistent with the final system plan. As a condition of its investment in the Corporation, the Association may require that the Corporation adopt limitations consistent with the final system plan on the circumstances under which dividends on the series B preferred stock and common stock are payable so long as any of the debentures or series A preferred stock are outstanding."

PROTECTION OF FEDERAL FUNDS

SEC. 609. Title III of such Act, as amended by this Act, is further amended by inserting the following new section:

"PROTECTION OF FEDERAL FUNDS

"SEC. 307. (a) AUDIT.—(1) The Comptroller General of the United States is authorized to audit the programs, activities, and financial operations of the Corporation for any period during which (A) Federal funds provided pursuant to this Act are being used to finance any portion of its operations, or (B) Federal funds have been invested therein pursuant to this Act. Any such audit may be conducted under such rules and regulations as the Comptroller General may prescribe. The Comptroller General shall report to the Congress at such times and to such extent as he considers necessary to keep the Congress informed on the security of such Federal funds and guarantees and, to the extent appropriate, make recommendations for achieving greater economy, efficiency, and effectiveness in such programs, activities, and operations.

"(2) For the purpose of any audit conducted pursuant to subsection (a) of this section, the Comptroller General, or a designated representative of the Comptroller General, shall have access to and the right to examine all books, accounts, records, reports, files, and other papers, items, or property belonging to or in use by the Corporation.

"(b) REPORT.—The Association shall prepare and submit an annual report to Congress on the performance of the Corporation in order to keep the Congress informed as to matters which may affect the quality of rail services in the region and which may affect the security of Federal funds referred to in subsection (a) of this section. Each such report shall be submitted within 150 days after the end of the fiscal year of the Corporation. Each such report shall include an evaluation of—

"(1) the degree to which the goals of section 206(a) of this Act are being met;

"(2) the amounts and causes of deviations, if any, from the financial projections of the final system plan;

“(3) the amount of Federal funds made available to the Corporation and a clear description of the uses of such funds;

“(4) the projected financial needs of the Corporation;

“(5) the projected sources from which such financial needs are likely to be met; and

“(6) the ability of the Corporation to become financially self-sustaining without requiring Federal funds in excess of those authorized by section 216(f) of this Act.”.

CONTINUING REORGANIZATION; SUPPLEMENTAL TRANSACTIONS

SEC. 610. (a) Section 102 of such Act (45 U.S.C. 702), as amended by this Act, is amended—

(1) in paragraph (16) thereof, by striking out “and”;

(2) in paragraph (17) thereof, by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following two new paragraphs:

“(18) ‘subsidiary’ means any corporation 100 percent of whose total combined voting shares are, directly or indirectly, owned or controlled by the Corporation; and

“(19) ‘supplemental transaction’ means any transaction set forth in a proposal under section 305 of this Act, within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act, under which the Corporation or a subsidiary thereof would (A) acquire rail properties not designated for transfer or conveyance to it under the final system plan, (B) convey rail properties to a profitable railroad, a subsidiary of the Corporation or, other than as designated in the final system plan, to the National Railroad Passenger Corporation or to a State or a local or regional transportation authority, or to any other responsible person for use in providing rail service, or (C) enter into contractual or other arrangements with any person for the joint use of rail properties or the coordination or separation of rail operations or services.”.

(b) Title III of such Act is amended by adding at the end thereof the following new sections:

“CONTINUING REORGANIZATION; SUPPLEMENTAL TRANSACTIONS

“SEC. 305. (a) PROPOSALS.—If the Secretary or the Association determines that, as part of continuing reorganization, further restructuring of rail properties in the region through transactions supplemental to the final system plan would promote the establishment and retention of a financially self-sustaining rail service system in the region adequate to meet the needs of the region, the Secretary or the Association, as the case may be, may develop proposals for such supplemental transactions as are necessary or appropriate to implement the needed restructuring. Transfers of rail properties included in proposals developed by the Association shall be limited to (1) rail properties which would have qualified for designation under section 206(c)(1) (A) of this Act but which were not transferred or conveyed under the final system plan, and which the Association finds to be essential to the efficient operations of the Corporation, and (2) transfers, con-

sistent with the final system plan, of rail properties from the Corporation to a subsidiary thereof. Each proposal (other than a proposal developed by the Association) shall be submitted in writing to the Association and shall state and describe any transactions proposed, the rail properties involved, the parties to such transactions, the financial and other terms of such transactions, the purposes of the Act or the goals of the final system plan intended to be effectuated by such transactions, and such other information incidental thereto as the Association may prescribe. Within 10 days after receipt of a proposal developed by the Secretary, and upon the development of a proposal developed by the Association, the Association shall publish a summary of such proposal in the Federal Register, and shall afford interested persons (including the Corporation when property is to be transferred to or from the Corporation) an opportunity to comment thereon.

“(b) **EVALUATION BY ASSOCIATION.**—The Association shall analyze each proposal containing one or more supplemental transactions, taking into account the comments of interested persons and statements and exhibits submitted at any public hearings which may have been held. The Association shall, within 120 days after the publication of a summary thereof under subsection (a) of this section, publish in the Federal Register, a report evaluating such proposal. Such evaluation shall state whether the supplemental transactions contained in such proposal, considered in their entirety, are (1) in the public interest and consistent with the purposes of this Act and the goals of the final system plan, and (2) fair and equitable. If the Corporation opposes, or seeks modification of, any such proposed transfer, its written comments shall be given due consideration by the Association and shall be published as part of the evaluation. Within 30 days after the Association publishes its report, each proposed transferor or transferee shall notify the Association in writing as to whether any proposed supplemental transaction requiring the transfer of any property from or to such transferor or transferee is acceptable to such proposed transferor or transferee. If any such proposed transferor (other than the Corporation) or transferee fails to notify the Association that any proposed supplemental transaction requiring the transfer of any property from such transferor or to such transferee is acceptable to it, no further administrative or judicial proceedings shall be conducted with respect to such proposed supplemental transaction.

“(c) **REVIEW BY THE COMMISSION.**—Within 90 days after the publication in the Federal Register of each report referred to in subsection (b) of this section, the Commission shall determine whether the supplemental transactions referred to in the report, considered in their entirety, would be in the public interest and consistent with the purposes of this Act and the goals of the final system plan. In making such determination, the Commission shall give due consideration to the views received by it, within 30 days after the publication of the applicable report, from the Corporation and the Secretary. The Commission may condition its approval of such supplemental transactions on such reasonable terms and conditions as it may deem necessary in the public interest. The approval by the Commission of such supplemental transactions shall not be a prerequisite to the consummation of such transactions, but any determination of the Commission modifying, approving, or disapproving any proposed supplemental transac-

tions shall be given due weight and consideration by the special court in the proceedings prescribed in subsection (d) of this section. If the Commission fails to act within the time period provided in this subsection, the supplemental transactions involved shall be deemed to have been approved by the Commission. The Commission may prescribe such regulations as may be necessary for the administration of this section.

“(d) SPECIAL COURT PROCEEDINGS.—(1) If the Association has made the determination pursuant to subsection (b) of this section that a proposal for supplemental transactions is in the public interest and consistent with the purposes of this Act and the goals of the final system plan, and is fair and equitable, the Association shall, within 40 days after the date of the Commission’s determination under subsection (c) of this section, or after the expiration of the 90-day period referred to in such subsection (c), whichever is applicable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this Act and the goals of the final system plan, and is fair and equitable, and directing the Corporation to carry out the supplemental transactions specified in such proposal. If the Association has determined, pursuant to subsection (b) of this section that a proposal made by the Secretary is not in the public interest or is not consistent with the purposes of this Act and the goals of the final system plan or is not fair and equitable, the Secretary may, if he determines that such proposal is in the public interest and consistent with the purposes of this Act and the goals of the final system plan and is fair and equitable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this Act and the goals of the final system plan and is fair and equitable, and directing the Corporation to carry out any supplemental transactions specified in such proposal. Such a petition shall be submitted to the special court within 90 days after the date of the Commission’s determination under such subsection (c), or after the expiration of the 90-day period referred to in such subsection (c), whichever is applicable.

“(2) Within 180 days after the filing of a petition under paragraph (1) of this subsection, the special court shall decide, after a hearing, whether the proposed supplemental transactions contained in such petition, considered in their entirety, are in the public interest and consistent with the purposes of this Act and the goals of the final system plan and are fair and equitable. If the special court determines that such proposed supplemental transactions, considered in their entirety, are in the public interest and consistent with the purposes of this Act and the goals of the final system plan and are fair and equitable, it shall, upon making such determination, issue such orders as may be necessary to direct the Corporation to consummate the transactions. If the special court determines that such proposed supplemental transactions, considered in their entirety, are not in the public interest or not consistent with the purposes of this Act and the goals of the final system plan, or are not fair and equitable, it shall file an opinion stating its conclusion and the reasons therefor. In such event the Association (in the case of a proposal developed by the Associa-

tion) or the Secretary (in the case of a proposal developed by the Secretary) may, within 120 days after the filing of such opinion, certify to the special court that the terms and conditions of the proposal have been modified consistent with the opinion of the court and are acceptable to each proposed transferor (other than the Corporation) or transferee, and may petition the special court for reconsideration of the proposal as so modified. Within 90 days after the filing of such petition, the special court shall decide, after a hearing, whether the proposal as modified by the certification is in the public interest and consistent with the purposes of this Act and the goals of the final system plan and is fair and equitable, and shall enter such further orders as are consistent with its determination.

“(3) The Corporation is authorized to petition the special court and to be represented regarding any proposed supplemental transaction, contained in a proposal developed by either the Association or the Secretary, which involves the properties of the Corporation.

“(4) In proceedings under this subsection, the special court is authorized to exercise the powers of a judge of a United States district court with respect to such proceedings and such powers shall include those of a reorganization court.

“(5) Any evaluation by the Association, the Secretary, or the Commission shall not be reviewable in any court except the special court in accordance with the provisions of this section. The supplemental transactions shall not be restrained or enjoined by any court nor shall they be otherwise reviewable by any court other than by the special court to the extent provided in this section.

“(6) Notwithstanding any other provision of this Act, no findings, determinations, or proceedings shall be required with respect to any proposal for supplemental transactions other than as expressly set forth in this section.

“(7) Any supplemental transaction under this section shall subject the transferor and transferee, in each such supplemental transaction, to the requirements and other provisions of title V of this Act, except that the term ‘effective date of this Act’ contained in such title V shall be applied to such supplemental transaction as if it read ‘effective date of the supplemental transaction’.

“(8) A final order or judgment of the special court entering or denying an order pursuant to this subsection shall be reviewable in the same manner as provided in section 209(e) (3) of this Act.

“(e) DEFINITION.—As used in this section, the term ‘fair and equitable’ means fair and equitable, in accordance with the standards applicable to the approval of a plan of reorganization (or a step in such plan) under section 77 of the Bankruptcy Act (11 U.S.C. 205) to—

“(1) the estates of railroads in reorganization in the region and persons leased, operated, or controlled by such railroads who have conveyed rail properties, under section 303(b) (1) of this title, in exchange for securities of the Corporation, the Association, or profitable railroads and other benefits provided as a consequence of this Act and to any subsequent holders of such securities at the time of the supplemental transaction involved; and

“(2) the holders of other securities of the Corporation.

Whenever any property or securities of the Corporation are required to be valued in order to determine whether the terms of a supplemental transaction are fair and equitable, the special court shall give proper recognition to the contributions to the Corporation by all classes of security holders, except that such court shall not assign to the series B preferred stock or the common stock of the Corporation any values added to those securities, by reason of investment by the Association in debentures and series A preferred stock of the Corporation, in excess of any value required by constitutional principles applicable to a reorganization process.

“SEC. 306. (a) GENERAL.—On the date when the Corporation is required to deposit securities with the special court pursuant to section 303(a) (1) of this title, the Association shall deposit with the special court the certificates of value of the Association required by this section. The Secretary shall guarantee the payment of all certificates of value delivered in accordance with this title. All guarantees entered by the Secretary under this section shall constitute general obligations of the United States of America for the payment or redemption of which its full faith and credit are pledged. Such guarantees shall be valid and incontestable except as to mutual mistake of fact or as to fraud or material misrepresentation by the holder of such certificates or the transferor of rail properties to which certificates of value of any series so guaranteed are issued.

“(b) NUMBER AND DISTRIBUTION.—A separate series of certificates of value shall be issued to each railroad in reorganization in the region and each person leased, operated, or controlled by such a railroad that transfers rail properties to the Corporation or a subsidiary thereof. The number of certificates of value of each series to be deposited pursuant to subsection (a) shall be equal to the number of shares of series B preferred stock of the Corporation which are required to be deposited by the Corporation with the special court, pursuant to section 303(a) (1) of this title in exchange for the rail properties transferred to the Corporation or a subsidiary thereof by such transferor. Certificates of value of the appropriate series shall be distributed by the special court, pursuant to section 303(c) (4) of this title, at the same time to the same transferors, and in the same numbers of units as shares of such series B preferred stock are distributed to such transferor.

“(c) REDEMPTION.—(1) Certificates of value, of any series, shall be redeemed by the Association on December 31, 1987, or on such earlier date as the Board of Directors of the Association and the Finance Committee jointly may determine and specify.

“(2) Each certificate of value of each series shall be redeemable for an amount, payable in cash, equal to its base value on the redemption date, minus—

“(A) the sum of the fair market value of the series B preferred stock applicable to such certificate, the fair market value of the common stock applicable to such certificate, and all cash dividends theretofore paid on any such series B preferred stock and on any such common stock; and

“(B) any sums paid to a transferor of rail properties to whom such series of certificates of value was issued resulting from sales or leases by the Corporation of properties transferred to it by

such transferor divided by the number of certificates of value distributed to such transferor.

“(3) The number of shares of series B preferred stock and common stock applicable to each certificate of value of any series, pursuant to paragraph (2) of this subsection, shall be—

“(A) one share of series B preferred stock (without regard to any stock splits, stock combinations, reclassifications or similar transactions affecting the number of shares of outstanding series B preferred stock following the date of distribution pursuant to section 303(c) (4) of this title); and

“(B) the number of shares of common stock determined by dividing the total number of shares of common stock distributed pursuant to section 303(c) (4) of this Act to the transferor receiving such series of certificate of value by the total number of certificates of value in the series so distributed to such transferor.

“(4) The base value of each certificate of value of any series shall be the value obtained by (A) taking the net liquidation value, as determined by the special court, to which the transferor to whom such series of certificates of value is issued is entitled by virtue of transfers of rail properties, under section 303(b) (1) of this title to the Corporation or a subsidiary thereof; (B) subtracting the value of other benefits provided under this Act, as determined by the special court; (C) adding such amount, if any, as the special court may determine shall be required after taking into consideration compensable unconstitutional erosion, if any, in the estate of a railroad in reorganization, or of a railroad leased, operated, or controlled by such a railroad, which the special court finds to have occurred during any bankruptcy proceeding with respect to such railroad; (D) adding interest from the transfer date to the redemption date to be compounded annually at a rate of 8 percent per annum; and (E) dividing the resulting value by the number of certificates of value of such series distributed to such transferor. In determining such base value, the special court shall give due weight and consideration to the finding of the Association as to the net liquidation value to which each transferor is entitled by virtue of conveyances of rail properties under section 303 (b) (1) of this title. For purposes of this paragraph, the term ‘rail properties’ includes all rights with respect to employee benefit plans transferred and assigned to the Corporation pursuant to section 303 (b) (6), of this title. Net liquidation value with respect to such rights shall be determined after taking into account all obligations finally transferred or assigned to the Corporation pursuant to such section.

“(5) The fair market value of series B preferred stock and of common stock of the Corporation shall be determined in accordance with regulations prescribed by the Association, on the basis of the average price of each such security in the primary established market in which such securities are traded over a period of 120 consecutive trading days ending not less than 20 nor more than 40 trading days preceding the redemption date, or, in the case of a security for which there is not an established trading market, on the basis of the fair market value thereof as determined by the majority vote of three experts in the valuation of securities, one to be selected by the Association, one to be selected by the directors of the Corporation elected by the holders

of the security to be valued, and one to be selected by the two first selected.

“(d) AUTHORIZATION FOR APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to discharge the obligations of the United States arising under this section.”.

OFFICERS AND DIRECTORS OF THE CORPORATION

SEC. 611. (a) Section 301(c) of such Act (45 U.S.C. 741(c)) is amended by inserting “(1)” immediately before “The members”, by deleting the second sentence of such paragraph (1) and by adding at the end thereof the following new paragraph:

“(2) Notwithstanding any provision of State law, after the date of enactment of this paragraph, the members of the executive committee of the Association (including duly authorized representatives of members who are authorized by this Act to be represented) and the chief executive officer and chief operating officer of the Corporation shall adopt the bylaws of the Corporation and serve as the Board of Directors of the Corporation until all members of the Board of Directors of the Corporation have been selected in accordance with subsection (d) of this section. The chief executive officer shall serve as chairman of such Board until a chairman thereof is selected pursuant to subsection (d) of this section, after which time such chairman shall serve at the pleasure of such Board.”.

(b) Section 301(d) of such Act (45 U.S.C. 741(d)) is amended to read as follows:

“(d) BOARD OF DIRECTORS.—(1) Notwithstanding any provision of State law, the articles of incorporation and bylaws of the Corporation shall provide that the Board of Directors of the Corporation shall consist of 13 members selected in accordance with the articles and bylaws of the Corporation, as follows:

“(A) six individuals selected by the holders of the Corporation’s debentures and series A preferred stock voting as one class, with every \$100 principal amount of debentures, and every \$100 liquidation amount of series A preferred stock each receiving one vote for directors;

“(B) three individuals selected by the holders of the Corporation’s series B preferred stock; and

“(C) two individuals selected by the holders of the Corporation’s common stock.

“(2) The chief executive officer and the chief operating officer of the Corporation shall also serve on the Board, but the chief executive officer and chief operating officer of the Corporation shall not be entitled to vote on the election or removal of either. In the event a vacancy occurs on the Board of Directors due to death, disability or resignation of a director (other than resignations pursuant to this subsection), such vacancy shall be filled only by a vote of the holders of the class of securities that initially elected such director. Two members of the Board selected by the holders of the Corporation’s debentures and series A preferred stock shall resign when the total of the principal amount of the outstanding debentures and the amount of the liquidation amount of the outstanding series A preferred stock, once having exceeded \$1,500,000,000, has been reduced below that amount; two

additional members of the Board selected by the holders of the Corporation's debentures and series A preferred stock of the Corporation shall resign when the total of the principal amount of the outstanding debentures and the amount of the liquidation amount of the outstanding series A preferred stock, once having exceeded \$1,500,000,000, has been reduced below \$750,000,000. The two remaining members of the Board selected by the holders of the Corporation's debentures and series A preferred stock shall resign when all the debentures and series A preferred stock have been redeemed by the Corporation. As directors resign in accordance with the foregoing provisions, the election of corporate directors to fill the vacancies created by their resignations shall be governed by applicable State law and the articles and bylaws of the Corporation."

(c) Section 301 of such Act (45 U.S.C. 741) is amended by (1) striking out subsection (f) thereof; (2) redesignating subsection (g) thereof as subsection (h); and (3) inserting therein the following two new subsections:

"(f) OFFICERS.—The officers of the Corporation shall include a chief executive officer and a chief operating officer, who shall be appointed by the Board of Directors and who shall serve at the pleasure of the Board; and such other officers as shall be provided for in the bylaws of the Corporation.

"(g) VOTING TRUSTEES.—For and during the period between the deposit of securities of the Corporation with the special court, in accordance with section 303(a) of this title, and the distribution of such securities, in accordance with section 303(c) of this title, the special court shall, within 30 days after the date of conveyance pursuant to section 303(b)(1) of this Act, appoint one or more voting trustees for each class of securities which is so deposited. Such voting trustees shall, on behalf of the distributees, exercise the rights of the holders of such securities as their interests may appear. Within 30 days after such appointment, such voting trustees shall select members of the Board of Directors of the Corporation on behalf of the holders of the class of securities whose rights they exercise pursuant to this subsection."

MISCELLANEOUS AMENDMENTS TO TITLE III

SEC. 612. (a) Section 303(b)(3) of such Act (45 U.S.C. 743(b)(3)) is amended to read as follows:

"(3)(A)(i) Notwithstanding any other provision of this Act, if an interest in railroad rolling stock is included in the rail properties conveyed pursuant to subsection (b)(1) of this section, and if such conveyance is in accordance with the requirements of clause (ii) of this subparagraph, the conveyance of such properties shall be deemed an assignment. Any such assignment shall relieve the assignor of liability for any breach which occurs after the date of such conveyance, except that such assignor shall remain liable for any breach, event of default, or violation of covenant which occurred (and any charges or obligations which accrued) prior to the date of such conveyance, regardless of whether the assignee thereof assumes such liabilities, charges or obligations. If any such liabilities, charges, or obligations (accrued prior to the date of such conveyance) are paid by or on behalf of any person or entity other than such assignor, such

person or entity shall have a claim to direct reimbursement, as a current expense of administration, from such assignor, together with interest on the amount so paid.

“(ii) A conveyance referred to in clause (i) of this subparagraph may be effected only if—

“(I) the Corporation or a subsidiary thereof, the profitable railroad operating in the region, or the State or responsible person to whom such conveyance is made assumes all of the obligations under any applicable conditional sale agreement, equipment trust agreement, or lease with respect to such rolling stock (including any obligations which accrued prior to the date on which such properties are conveyed), and

“(II) such conveyance is made subject to such obligations. As used in this subparagraph, the term ‘railroad rolling stock’ means assets which could be carried in Interstate Commerce Commission account numbers 52, 53, 54, and 57.

“(B) Subject to the provisions of this paragraph, the provisions of this Act shall not affect the title and interests of any lessor, equipment assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease under section 77(j) of the Bankruptcy Act (11 U.S.C. 205(j)). A profitable railroad operating in the region, the Corporation or a subsidiary thereof, or a State or responsible person, to whom such a conveyance is made as assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease. Such an assignment or conveyance to, and such an assumption of liability by, such a profitable railroad, Corporation, subsidiary, State, or responsible person shall not be deemed a breach, an event of default, or a violation of any covenant of any such conditional sale agreement, equipment trust agreement, or lease so assigned or conveyed, notwithstanding any provisions of any such agreement or lease.”

(b) Section 201 of the Government Corporation Control Act (31 U.S.C. 856) is amended by (1) inserting “and” after the comma at the end of subsection (7) thereof; and (2) deleting “, and (9) the Consolidated Rail Corporation to the extent provided in the Regional Rail Reorganization Act of 1973.” and inserting in lieu thereof “.”.

(c) (1) Section 303(a)(1) of such Act (45 U.S.C. 743(a)(1)) is amended by inserting after “Corporation”, the second time it appears “or any subsidiary thereof”.

(2) Paragraphs (1) and (2) of section 303(b) of such Act (45 U.S.C. 743(b) (1) and (2)) are amended by inserting after “Corporation” each time it appears therein (except the first time) “or any subsidiary thereof”.

(3) Section 303(c)(1) of such Act (45 U.S.C. 743(c)(1)) is amended by inserting after “Corporation” each time it appears “or any subsidiary thereof”.

(4) Paragraph (2)(A) of section 303(c) of such Act (45 U.S.C. 743(c) (2) (A)) is amended by striking “Corporation” the second time it appears and inserting in lieu thereof “Corporation or any subsidiary thereof”.

(d) (1) Section 303(a)(2) of such Act (45 U.S.C. 743(a)(2)) is amended by inserting after “region” the first time it appears “and each State or responsible person (including a government entity)”.

(2) Section 303(b)(1) of such Act (45 U.S.C. 743(b)(1)) is amended (A) by inserting immediately after "region" the first place it appears the following: ", States, and responsible persons", and (B) by striking out "and the respective profitable railroads operating in the region" and inserting in lieu thereof ", the respective profitable railroads operating in the region, States, and responsible persons".

(3) Section 303(b)(2) of such Act (45 U.S.C. 743(b)(2)) is amended by striking out "and the respective profitable railroads operating in the region" and inserting in lieu thereof ", the respective profitable railroads operating in the region, States, and responsible persons".

(4) Paragraph (4) of section 303(b) of such Act (45 U.S.C. 743(b)(4)) is amended by striking "or the profitable railroad" and inserting in lieu thereof ", profitable railroad, State, or responsible person".

(5) Section 303(c) of such Act (45 U.S.C. 743(c)) is amended by striking "and profitable railroads operating in the region" and inserting in lieu thereof ", profitable railroads operating in the region, States, and responsible persons".

(6) Paragraph (1) (A) (ii) of section 303(c) of such Act (45 U.S.C. 743(c)(1)(A)(ii)) is amended by inserting "State, or responsible person" after "region,".

(7) Paragraph (3) of section 303(c) of such Act (45 U.S.C. 743(c)(3)) is amended by inserting ", State, or responsible person" after "region" and by inserting after "railroad" each time it appears therein (except the first time) ", State, or responsible person".

(8) Paragraph (4) of section 303(c) of such Act (45 U.S.C. 743(c)(4)) is amended by inserting ". States, and responsible persons" after "railroads".

(e) Section 303(c)(2) of such Act (45 U.S.C. 743(c)(2)) is amended by (1) striking out "shall" in the clause preceding subparagraph (A) thereof and inserting "may" in lieu thereof; (2) striking out the semicolon at the end of subparagraph (A) thereof and inserting in lieu thereof ", except that at least one share of series B preferred stock and one certificate of value shall be allocated to each such railroad;"; and (3) amending subparagraph (C) thereof to read as follows:

"(C) enter a judgment against the Corporation if the judgment would not endanger the viability or solvency of the Corporation."

(f) Section 303(c) of such Act (45 U.S.C. 743(c)) is amended by adding at the end thereof the following new paragraph:

"(5) Whenever the special court orders, pursuant to section 303(b)(1) of this title, the transfer or conveyance to the Corporation or any subsidiary thereof of rail properties designated under section 206(c)(1)(C) or (D) of this Act, to the National Railroad Passenger Corporation, to a profitable railroad, or to a State, or responsible person (including a government entity), the United States shall pay any judgment entered against the Corporation with respect to the conveyance of any such rail properties or against the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person, plus interest thereon at such rate as is constitutionally required. The United States may, in its discretion, represent the Corporation or the National Railroad Passenger Corporation, such prof-

itable railroad, State or responsible person, in any proceedings before the special court that could result in such a judgment against the Corporation under paragraph (2) of this subsection or against the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, under paragraph (3) of this subsection. The Corporation, the National Railroad Passenger Corporation, any profitable railroad, State, or responsible person, which is represented by the United States of America shall cooperate diligently in whatever manner the United States shall reasonably request of it in connection with such proceedings. Neither the Corporation, or its subsidiaries, nor the National Railroad Passenger Corporation, any profitable railroad, State or responsible person, shall be obligated to reimburse the United States for any moneys paid by the United States pursuant to this section.”

(g) Section 303(d) of such Act (45 U.S.C. 743(d)) is amended by (1) striking out “5” and inserting in lieu thereof “20”.

(h) Section 303(c)(4) of such Act (45 U.S.C. 743(c)(4)) is amended by (1) striking out “subsection (b)” and inserting in lieu thereof “subsection (a)” ; and (2) inserting after “region” the following: “and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties”.

(i) Section 303 of such Act (45 U.S.C. 743) is amended by (1) adding “certificates of value” after “securities” in subsection (c)(1) (A) thereof, in the preamble of subsection (c)(2) and in subsection (c)(2) thereof, and in subsection (c)(3) thereof; (2) adding “and certificates of value” after “of the Corporation” in subsection (c)(2) (A) thereof and after “Corporation’s securities” in subsection (c)(2) (B) thereof; (3) striking out “obligations of the Association” each place the phrase appears and inserting in lieu thereof “certificates of value issued by the Association”; and (4) striking out “obligations” each place it appears other than as part of such phrase and inserting in lieu thereof “certificates of value”.

(j) (1) Section 301(a) of such Act (45 U.S.C. 741(a)) is amended by inserting immediately after “Corporation” the following: “or such other corporate name as may be duly adopted by the Corporation”.

(2) Section 201(k) of such Act (45 U.S.C. 711(k)), as redesignated by section 603(a) of this Act, is amended (A) by striking out “these provisions” in the third sentence thereof and inserting in lieu thereof “this provision”; (B) by striking out “or the Corporation” each place it appears in the third and fourth sentences thereof; and (C) by striking out the second sentence thereof.

(3) Section 301(b) of such Act (45 U.S.C. 741(b)) is amended in the third sentence thereof by inserting immediately after “of the Corporation” the following: “or of its principal railroad operating subsidiary”.

(k) Section 303(b)(4) of such Act (45 U.S.C. 743(b)(4)) is amended by inserting immediately after “is made assumes” the following: “all future liability under such lease and”.

(l) Section 303(b) of such Act (45 U.S.C. 743(b)) is amended by inserting at the end thereof the following two new paragraphs:

“(5) Notwithstanding any covenant, undertaking, condition, or provision of any sort in any lease, agreement, or contract, the convey-

ance, transfer, assignment, or other disposition of such lease, agreement, or contract or of any interest therein to, or the assumption by, the Corporation or any subsidiary thereof, or a profitable railroad of obligations thereunder, shall not be deemed a breach, an event of default, or a violation of any covenant of such lease, agreement, or contract.

“(6) Notwithstanding anything to the contrary contained in this Act or any other provision of law, the special court shall include in its order such further directions as may be necessary to assure (A) that the operation and administration of the employee pension benefit plans described in section 505(a) of this Act shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (B) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 for benefits accruing during such period).”.

(m) Section 301 of such Act (45 U.S.C. 741) is amended by adding at the end thereof the following two new subsections:

“(h) **LIABILITY OF DIRECTORS.**—No director of the Corporation shall be liable, for money damages or otherwise, to any party by reason of the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which he in good faith reasonably believed to be required by law or vested in him in his capacity as a director of the Corporation or as an officer of the United States. The United States shall indemnify such person against all judgments, amounts paid in settlement, and costs and expenses (including fees of accountants, experts, and attorneys) actually and reasonably incurred in connection with any such action, suit, or proceeding in which such person is determined to have met such standard of conduct. This subsection shall not be construed to grant any immunity from any criminal law of the United States.

“(i) **CORPORATE SIMPLIFICATION.**—In the interest of corporate simplification, the Corporation, in implementing the final system plan, shall undertake, as soon as possible and pursuant to financial assistance provided by the Railroad Revitalization and Regulatory Reform Act of 1976, to acquire all interests in rail lines and related rail properties otherwise conveyed to the Corporation, upon the tender of such interests to it, so as to eliminate any remaining intermediate layers of ownership or interest, such as leaseholds, owned or held by persons who are neither a railroad, a railroad in reorganization, nor controlled by a

railroad in reorganization. Any option conditions regarding the purchase price for such interests, in existence since prior to January 2, 1974, shall be deemed to be conclusive of fair and equitable value.”.

(n) Section 303(c)(3) of such Act (45 U.S.C. 743(c)(3)) is amended by adding at the end thereof the following: “The special court shall also find the amount of the payments, if any, which each profitable railroad has made on behalf of a transferor railroad in reorganization in accordance with section 211(h) of this Act, for which payment the profitable railroad has not been reimbursed, as provided in section 211(h). Notwithstanding any other provision of this paragraph or of paragraph (4), the special court shall order the return to any such profitable railroad from compensation deposited by such profitable railroad pursuant to section 303(a)(2), of any such amount so found together with interest at the rate provided in section 211(h).”.

(o) Section 303(b)(1) of such Act (45 U.S.C. 743(b)(1)) is amended by striking out “railroad leased” and inserting in lieu thereof “person leased”.

(p) Section 303(b)(1) of such Act (45 U.S.C. 743(b)(1)) is amended by adding at the end thereof the following: “In any case where the special court orders the trustee or trustees of a railroad in reorganization in the region to execute and deliver deeds or other instruments conveying rail properties to the Corporation or a subsidiary thereof or to a profitable railroad operating in the region or a State or responsible person, those deeds or other instruments may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who have been duly authorized to perform such acts on behalf of the trustee or trustees by the district court of the United States or any other court having jurisdiction over the respective railroad in reorganization in the region. Notwithstanding any provision of State or local law, in any case where deeds or other instruments have been executed, acknowledged, or delivered by a representative of the trustee or trustees of a railroad in reorganization in the region in accordance with the previous sentence, such execution, acknowledgment, and delivery, and the deeds or other instruments to which they pertain, shall have the same legal effect as they would have had if the trustee or trustees had themselves executed, acknowledged and delivered such deeds or other instruments.”.

(q) (1) Section 303(c)(1)(A)(i) of such Act is amended by inserting after “exchange” the second time it appears the following: “taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad)”.

(2) Section 303(c)(1)(A)(ii) of such Act (45 U.S.C. 743(c)(1)(A)(ii)) is amended by inserting immediately after “region,” the following: “in exchange for compensation and other benefits accruing to such transferor as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad)”.

(3) Section 303(c)(2) of such Act (45 U.S.C. 743(c)(2)) is amended by inserting immediately after “reorganization” the second time it appears the following: “(taking into consideration compensa-

ble unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad)".

(4) Section 303(c)(3) of such Act (45 U.S.C. 743(c)(3)) is amended by adding at the end thereof the following new sentence: "In making any finding under this paragraph, the special court shall take into consideration compensable unconstitutional erosion, if any, which it finds to have occurred in the estate of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by such a railroad, during the bankruptcy proceeding with respect to such railroad."

DEFINITIONS

SEC. 613. Section 501 of such Act (45 U.S.C. 771) is amended—

(1) in paragraphs (1) and (6) thereof, by inserting immediately after "Corporation" each place it appears the following: "or a subsidiary thereof";

(2) in paragraph (2) thereof (A) by inserting immediately after "Corporation" the following: "or a subsidiary thereof, to the National Railroad Passenger Corporation,"; and (B) by striking out "except a president," and inserting in lieu thereof "(except a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization), but does not include a president,";

(3) by amending paragraph (3) thereof to read as follows:

"(3) 'protected employee' means any employee of—

"(A) an acquiring or selling railroad who is adversely affected by a transaction;

"(B) the Corporation who, immediately preceding such employment by the Corporation, was employed by a selling railroad and who is adversely affected by the sale of rail properties to the Corporation pursuant to an offer designated under section 206(c)(2) of this Act;

"(C) a railroad in reorganization in the region; and

"(D) a railroad who is adversely affected by a supplemental transaction under section 305 of this Act or by a project recommended under section 206(g) of this Act;

who, in any such case, has not reached age 65 on the effective date of this Act;"

(4) amending paragraph (8) thereof by (A) striking out "this Act or" and inserting in lieu thereof "this Act, including section 305 thereof, or", and (B) striking out "and" at the end of such paragraph;

(5) striking out the period at the end of paragraph (9) thereof and inserting in lieu thereof "and"; and

(6) adding at the end thereof the following new paragraph:

"(10) 'selling railroad' means a railroad which sells rail properties pursuant to an offer designated under section 206(c)(2) of this Act."

EMPLOYMENT OFFERS

SEC. 614. (a) Section 502(b) of such Act (45 U.S.C. 772(b)) is amended to read as follows:

“(b) **MANDATORY OFFER.**—The Corporation shall offer employment, to be effective as of the date of a conveyance or discontinuance of service under the provisions of this Act, to each employee of a railroad in reorganization in the region who has not already accepted an offer of employment by the Association (where applicable), an acquiring railroad, or the Corporation. Such offers of employment to employees represented by labor organizations shall be confined to their same craft and class. The Corporation shall apply to such employees the protective provisions of this title.”.

(b) Section 502(a) of such Act (45 U.S.C. 772(a)) is amended by adding at the end thereof the following new sentence: “As used in this subsection, the term ‘where applicable’ refers to the relation of the Association, as an employer (A) to employees of the Association who, before the date of conveyance, under section 303(b)(1) of this Act, had creditable service under the relevant statute and who were offered and accepted coverage under such statute, and (B) to former employees of railroads in reorganization in the region, after the date of such conveyance.”.

COLLECTIVE BARGAINING AGREEMENTS

SEC. 615. Section 504 of such Act (45 U.S.C. 774) is amended by adding at the end thereof the following three new subsections:

“(e) **LIABILITY FOR EMPLOYEE CLAIMS.**—In all cases of claims by employees, arising under the collective bargaining agreements of the railroads in reorganization in the region, and subject to section 3 of the Railway Labor Act (45 U.S.C. 153), the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier, as the case may be, shall assume responsibility for the processing of any such claims, and payment of those which are sustained or settled on or subsequent to the date of conveyance, under section 303(b)(1) of this Act, and shall be entitled to direct reimbursement from the Association pursuant to section 211(h) of this Act. In those cases in which claims for employees were sustained or settled prior to such date of conveyance, it shall be the obligation of the employees to seek satisfaction against the estates of the railroads in reorganization which were their former employers.

“(f) **TRANSFER OF EMPLOYEES TO THE NATIONAL RAILROAD PASSENGER CORPORATION OR ACQUIRING RAILROADS.**—Notwithstanding any otherwise applicable provisions of this title, protected employees to whom the Corporation has made offers of employment may be transferred to the National Railroad Passenger Corporation in accordance with the following procedure:

“(1) Not later than 90 days after the date of completion of the transaction required by section 206(c) of this Act, implementing agreement negotiations between representatives of the various crafts or classes of employees associated with the involved properties, the Corporation, and the National Railroad Passenger Corporation shall commence. These negotiations shall—

“(A) identify the specific employees of the Corporation to whom the National Railroad Passenger Corporation offers employment:

“(B) the procedure by which those employees of the Corporation may elect to accept employment with the National Railroad Passenger Corporation;

“(C) the procedure for acceptance of such employees into the National Railroad Passenger Corporation’s employment; and

“(D) the procedure for determining the seniority of such employees in their respective crafts or classes on the National Railroad Passenger Corporation’s system which shall, to the extent possible, preserve their prior seniority rights.

If no agreement regarding the matters referred to in this subsection is reached by the end of 60 days after the date of commencement of negotiations (which shall also be a date which is at least 90 days after the transaction contemplated by section 601(d) of this Act), upon notice of any party, all parties thereto shall within an additional 10 days select a neutral referee. If such parties are unable to agree upon the selection of such a referee, the National Mediation Board shall promptly appoint a referee. Hearings shall commence not later than 30 days after the date of selection or appointment of such referee, and a decision shall be rendered by such referee within 60 days after the date of commencement of the hearings. The referee shall resolve and decide all matters in dispute regarding the negotiation of the implementing agreement or agreements. All parties may participate, but the referee shall have the only vote. The referee’s decision shall be final and binding and shall constitute the implementing agreement or agreements between the parties. The salary and expenses of the referee shall be paid pursuant to the provisions of the Railway Labor Act.

“(2) Prior to implementation of an agreement or agreements pursuant to paragraph (1) of this subsection, the representatives of the various crafts or classes of employees designated to be transferred to the National Railroad Passenger Corporation shall meet with representatives of the National Railroad Passenger Corporation for the purposes of negotiating agreements regarding rates of pay, rules, and working conditions. If, 60 days after the date of commencement of such negotiations, no agreement has been reached, the bargaining agreement in existence on the rail properties from which the employees are to be transferred and which is applicable to the craft or class of employees being transferred will apply and such implementing agreement will be put into effect.

“(3) An employee of the Corporation who is entitled to protection and who is transferred as a result of an acquisition pursuant to this Act shall upon transfer to the National Railroad Passenger Corporation or to an acquiring railroad, carry with him his protected status. The National Railroad Passenger Corporation or an acquiring railroad, as new employers, shall be responsible for payment of protective benefits and shall be entitled to reimbursement pursuant to section 509 of this title.

“(4) The National Railroad Passenger Corporation may prior to completion of any of the agreements referred to in this section, offer employment to any noncontract employee. Noncontract em-

employees accepting employment with the National Railroad Passenger Corporation shall carry with them all rights and benefits accorded to them under this title.

“(g) ASSUMPTION OF PERSONAL INJURY CLAIMS.—All cases or claims by employees or their personal representatives for personal injuries or death against a railroad in reorganization in the region arising prior to the date of conveyance of rail properties, pursuant to section 303 of this Act, shall be assumed by the Corporation or an acquiring railroad, as the case may be. The Corporation or the acquiring railroad shall process and pay any such claims that are sustained or settled, and shall be entitled to direct reimbursement from the Association pursuant to section 211 (h) of this Act.”

EMPLOYEE PROTECTION

SEC. 616. (a) Section 505(a) of such Act (45 U.S.C. 775(a)) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: “, including benefits under any employee pension benefit plan in effect on December 1, 1975, other than a plan maintained primarily for the purpose of providing deferred compensation for a select group of management personnel or other highly compensated employees. For purposes of protecting employee pension benefits under this title, the term ‘protected employee whose employment is governed by a collective-bargaining agreement’ includes any beneficiary of, and any participant in, such plan, including noncontract employees. The protected benefits of such beneficiary or participant, accrued as of the date of conveyance, may be limited to the amount guaranteed under terminated plans pursuant to title IV of the Employee Retirement Income Security Act of 1974. Pension benefits shall not be paid to any beneficiary of a terminated plan whose benefits are guaranteed by such Act.”.

(b) Section 505(b)(1) of such Act (45 U.S.C. 775(b)(1)) is amended by striking out “the last 12 months immediately prior to his being adversely affected” and inserting in lieu thereof “the 12 full calendar months immediately preceding February 26, 1975, or in the case of a supplementary transaction, the 12 full calendar months immediately preceding the effective date of such transaction”.

(c) Section 505(b)(3) of such Act (45 U.S.C. 775(b)(3)) is amended by striking out “his being adversely affected” and inserting in lieu thereof “February 26, 1975, or the effective date of the supplemental transaction, as the case may be”.

(d) Section 505(b) of such Act (45 U.S.C. 775) is amended by (1) redesignating paragraph (4) thereof as paragraph (5) thereof and (2) inserting a new paragraph (4) therein as follows:

“(4) If a noncontract employee exercises seniority rights in a craft or class of employees protected under this Act, then, during the period such seniority is exercised, such noncontract employee shall be entitled to the same protection offered under this Act to employees in the craft or class in which such seniority is exercised. However, in computing the monthly displacement allowance, the last 12 months prior to February 26, 1975, during which such noncontract employee performed service under a collective-bargaining agreement, shall be used.”.

(e) Section 505(f) of such Act (45 U.S.C. 775(f)) is amended to read as follows:

“(f) **TERMINATION ALLOWANCE.**—The Corporation may terminate the employment of an employee of a railroad in reorganization who has less than 3 years’ service with such railroad, as of the date of enactment of this Act. The Corporation’s right to terminate an employee must be exercised within a period of 1 year from the date of conveyance, pursuant to section 303 of this Act. Upon notification to the employee of the Corporation’s intent to terminate his services, the employee shall have the option of accepting the termination allowance or of accepting a voluntary furlough without pay. If the employee entitled to receive a lump sum separation allowance accepts such an allowance, the amount shall be determined as follows:

2 to 3 years’ service-----	180 days’ pay at the rate of the position last held.
1 to 2 years’ service-----	90 days’ pay at the rate of the position last held.
Less than 1 year’s service-----	5 days’ pay at the rate of the position last held for each month of service.”.

(f) Section 505(h) of such Act (45 U.S.C. 775(h)) is amended by adding at the end thereof the following new sentence: “Provisions of this title shall be applied, upon a conveyance or discontinuance of service, to employees who are otherwise entitled to protective benefits and who were placed in furlough status on or after February 26, 1975.”

(g) Section 505 of such Act (45 U.S.C. 775) is amended by adding at the end thereof the following new subsection:

“(i) **NONCONTRACT EMPLOYEES.**—Compensation, severance, termination, and moving expense benefits for employees not governed by a collective-bargaining agreement shall be consistent with subsections (b), (c), (e), (f), and (g) of this section and shall be in accordance with the following provisions:

“(1) A protected employee, whose employment is not governed by the terms of a collective-bargaining agreement, may be required by the Corporation, upon reasonable notice, to transfer to any position on the Corporation’s system. If such transfer requires a change in residence, the employee may either voluntarily suspend his employment at his home location in lieu of protective benefits, or he may sever his employment and receive a benefit computed in accordance with subsection (e) or (f) of this section. These provisions supersede all provisions or conditions in subsection (d) of this section.

“(2) If any dispute arises between the Corporation and a non-contract employee regarding the interpretation or application of any provision of this title, the Corporation shall establish a resolution procedure with arbitration as the final step. Either party may request arbitration, and the cost and expenses of such arbitration shall be shared equally by the parties.”.

(h) Section 509 of such Act (45 U.S.C. 779) is amended to read as follows:

“PAYMENT OF BENEFITS

“SEC. 509. The Corporation, the Association (where applicable), and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided

protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title, other than provisions with respect to employee pension benefits, not to exceed the aggregate sum of \$250,000,000, by the Railroad Retirement Board, upon certification to such Board, by the Corporation, the Association (where applicable), and acquiring railroads, of the amounts paid such employees. Such reimbursement shall be made from a separate account maintained in the Treasury of the United States to be known as the Regional Rail Transportation Protective Account. Neither the Regional Rail Transportation Protective Account nor the Corporation nor an acquiring railroad shall be charged for any amounts of benefits paid to a protected employee under the provisions of the Railroad Unemployment Insurance Act or any other income protection law or regulation. There is authorized to be appropriated to the Regional Rail Transportation Protective Account annually such sums as may be required to meet the obligations payable hereunder, not to exceed the aggregate sum of \$250,000,000. There is further authorized to be appropriated to the Railroad Retirement Board annually such sums as may be necessary to provide for additional administrative expenses to be incurred by the Board in the performance of its functions under this section.”.

DUTIES OF ACQUIRING AND SELLING RAILROADS

(b) Section 601(b) of such Act (45 U.S.C. 791(b)) is amended to read as follows:

“DUTIES OF ACQUIRING AND SELLING RAILROADS

“SEC. 508. (a) ACQUIRING RAILROADS.—(1) An acquiring railroad shall offer such employment, subject to such rules and working conditions, and afford such employment protection to employees of a railroad from which it acquires properties or facilities (including operating rights) pursuant to this Act, and shall afford such protection to its own employees who are adversely affected by such acquisition, as shall be agreed upon between such acquiring railroad and the representatives of such employees prior to such acquisition, except that the protection and benefits (except as to rules and working conditions) provided for protected employees in such agreements shall be the same as those specified in section 505 of this title. Unless and until such agreements are reached, the acquiring railroad shall not enter into purchase agreements pursuant to section 206(d)(4) of this Act. For purposes of this subsection, the National Railroad Passenger Corporation shall be deemed to be an acquiring railroad, with respect to employees described in section 501(3) of this title.

“(2) If the National Railroad Passenger Corporation acquires rail properties of a railroad in reorganization in the region, prior to the date of conveyance of rail properties to the Corporation pursuant to section 303(b)(1) of this Act but after the publication of the preliminary system plan, it shall offer such employment and afford such employment protection to employees of a railroad from which it ac-

quires rail properties and shall further protect its own employees who may be adversely affected by such acquisition, as shall be agreed upon between the National Railroad Passenger Corporation and the representatives of such employees prior to such acquisitions. The protection and benefits provided for employees in such agreements shall be the same as those specified in section 505 of this title, and such protection and benefits shall supersede conflicting provisions in any previously applicable job stabilization agreements or agreements implementing such stabilization agreements, and the National Railroad Passenger Corporation shall be reimbursed for expenses incurred as a result of any such acquisition, as provided in section 509 of this title.

“(b) **SELLING RAILROADS.**—A selling railroad shall offer such employment and shall provide such employment protection to each of its employees who are adversely affected by such sale, pursuant to agreements to be entered into between it and the representatives of such employees prior to said sale: *Provided*, That (1) the protection and benefits provided for protected employees in such agreements shall be the same as those specified in section 505 of this title, and (2) unless and until such agreements are reached, the selling railroad shall not enter into selling agreements pursuant to section 206(d) of this Act.”.

EXEMPTIONS

SEC. 618. (a) Section 601(a)(2) of such Act (45 U.S.C. 791(a)(2)) is amended by adding immediately before the period at the end thereof the following: “and with respect to any action taken to formulate or implement any supplemental transaction”.

(b) Section 601(b) of such Act (45 U.S.C. 791(b)) is amended to read as follows:

“(b) **COMMERCE, SECURITIES, AND BANKRUPTCY.**—(1) The provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) and the Bankruptcy Act (11 U.S.C. 205 et seq.) are inapplicable (A) to actions taken under this Act to formulate and implement the final system plan where such action was in compliance with the requirements of such plan, and (B) to actions taken under this Act to formulate or implement any supplemental transaction.

“(2) All securities of the Corporation which are issued to the Association as the initial holder, or which are issued in connection with the transfer to the Corporation or a subsidiary thereof of rail properties under this Act, shall be deemed for all purposes to have been issued subject to and authorized pursuant to section 20a of the Interstate Commerce Act (49 U.S.C. 20a).

“(3) The provisions of section 5 of the Securities Act of 1933 (15 U.S.C. 77e), shall not apply to transactions involving the issuance of any security of the Corporation to the Association, transactions involving the issuance of any security of the Corporation that is deposited with the special court pursuant to section 303(a) of this Act, or transactions involving the issuance or distribution of any security of the Corporation, where the terms and conditions of such issuance or distribution are approved by the special court pursuant to section 303(c) of this Act.

“(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act (11 U.S.C. 205), with respect to a railroad in

reorganization in the region which conveys all or substantially all of its designated rail properties to the Corporation or a subsidiary thereof, or to profitable railroads in the region, pursuant to the final system plan, and the requirement that plans of reorganization be filed with the Commission, shall cease upon the date of such conveyance. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall also so terminate, as of the date of enactment of this paragraph, with respect to any railroad in reorganization under such section 77 but not subject to this Act which (1) does not operate any line of railroad, and (2) has transferred all or substantially all of its rail properties to a railroad in reorganization in the region which was subject to this Act prior to the date of enactment of this paragraph. Thereafter, such powers and duties of the Commission shall be vested in the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance. Such court shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77 on such terms as the court deems just and reasonable, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate. This paragraph does not affect any obligation of any carrier by railroad subject to regulation under the Interstate Commerce Act. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall continue in effect only to the extent that the railroad in reorganization continues to operate any line of railroad.”.

(c) Section 601(c) of such Act (45 U.S.C. 791(c)) is amended to read as follows:

“(c) ENVIRONMENT.—The provisions of section 102(2)(C)) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2(C))) shall not apply with respect to any action taken under authority of this Act before, and including, the conveyance of rail properties ordered by the special court under section 303(b)(1) of this Act, and shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.”.

APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 619. Nothing in this title shall affect the application of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to actions of the Commission.

TITLE VII—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

NATIONAL RAILROAD PASSENGER CORPORATION

SEC. 701. (a) GENERAL.—To carry out the purposes of this title, the Rail Passenger Service Act, and the Regional Rail Reorganization Act of 1973, the National Railroad Passenger Corporation is authorized to—

(1) acquire by purchase, lease, exchange, gift, or otherwise, and to hold, maintain, sell, lease or otherwise dispose of, any real or personal property or interest therein which is necessary or

useful in establishing and maintaining improved high-speed rail services, as specified in section 703 of this title;

(2) enter into and implement such contracts and agreements as are necessary or appropriate in the conduct of its functions;

(3) provide for the continuous operation and maintenance of rail freight, intercity rail passenger, and commuter rail passenger service over the properties acquired pursuant to this section: *Provided*, That any provision of rail freight or rail commuter service shall be effectuated by a compensatory contract with the responsible carrier;

(4) improved railroad rights-of-way between Boston, Massachusetts, and Washington, District of Columbia (including at its option, the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to enable improved high-speed rail passenger service to be provided between Boston, Massachusetts, and Washington, District of Columbia, and intermediate intercity markets, in accordance with the goals set forth in section 703 of this title;

(5) acquire, construct, improve, and install passenger stations; communications, electric power, and other facilities and equipment; public and private highway and pedestrian crossings; other safety facilities or equipment; and any other facilities or equipment which it determines are necessary to enable improved high-speed rail passenger service to be provided over the railroad rights-of-way to be improved under paragraph (4) of this subsection;

(6) enter into agreements with other railroads, other carriers, and commuter agencies, for the purpose of granting, acquiring, or entering into trackage rights, contract services, and other appropriate arrangements for freight and commuter services over the rights-of-way acquired under this title, with such agreement to be on such terms and conditions as are necessary to reimbursement for costs on an equitable and fair basis, except that cross subsidization among intercity, commuter, or rail freight services is prohibited;

(7) appoint a qualified individual to serve as the General Manager of the Northeast Corridor improvement project; and

(8) enter into agreements with telecommunications common carriers on a basis which is consistent with, and subject to, the Communications Act of 1934, for the purpose of continuing existing, and creating new and improved, rail passenger radio mobile telephone service in the high-speed rail passenger service area specified in section 703(1) of this title.

(b) **TRANSFER OF RAIL PROPERTIES.**—The Corporation, on the date of conveyance pursuant to section 303(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743), shall, by purchase or lease, transfer to the National Railroad Passenger Corporation all rail properties designated pursuant to sections 206(c)(1)(C) and 601(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C) and 791(d)), and it shall, within 180 days after the date of enactment of this title, execute agreements providing for the National Railroad Passenger Corporation to assume (1) all operational respon-

sibility for intercity rail passenger services with respect to such properties, and (2) control and maintenance of the properties transferred. Such parties may agree to retaining or transferring, in whole or in part, operational responsibility for rail freight or commuter rail services in the area specified.

(c) **DEFINITION.**—As used in this title, the term “Northeast Corridor” means the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland, and the District of Columbia.

OPERATIONS REVIEW PANEL

SEC. 702 (a) ESTABLISHMENT.—There is established an entity which shall be representative of the various users of Northeast Corridor rail transportation facilities, to be known as the Operations Review Panel (hereafter in this section referred to as the “Panel”). The Panel shall have the authority to take such actions as are necessary to resolve differences of opinion concerning operations (among or between the National Railroad Passenger Corporation, other railroads, and State, local, and regional agencies responsible for the provision of commuter rail, rapid rail, or rail freight services), with respect to all matters except those conferred on the Commission in section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)).

(b) **MEMBERSHIP.**—The Panel shall consist of 5 members, as follows:

(1) one member who shall be selected by the chief executive officer of the National Railroad Passenger Corporation;

(2) one member who shall be selected by majority vote of the commuter rail authorities which are subject to the jurisdiction of the Panel;

(3) one member who shall be selected by the chief executive officer of the Corporation; and

(4) two neutral members who shall be selected by the Chairman of the National Mediation Board.

The members shall each serve a term of 4 years from the date of such selection, or until a successor has been selected. If, within 45 days after the date of enactment of this Act, the National Railroad Passenger Corporation, the commuter authorities, or the Corporation fails to select the member who it is authorized to select under this subsection, the Chairman of the National Mediation Board shall, within 30 days after the expiration of such 45-day period, appoint a member on behalf of such party. Any member so appointed shall serve until such time as the party so represented selects a successor.

(c) **DECISIONS AND REVIEW.**—All decisions of the Panel shall be final and binding on the parties. All costs and expenses of the Panel shall be paid by (1) the National Railroad Passenger Corporation, (2) the commuter rail authorities which are subject to such Panel, and (3) the Corporation, each of which shall pay one-third of such costs and expenses, unless otherwise determined by a majority of the members of such Panel. The Panel may adopt such rules of procedure and may employ such resources as it considers appropriate. It may issue preliminary and final orders, which shall have the force and effect of law, with respect to any difference of opinion concerning any operational matter which is the subject of such an order. No order of the Panel

shall be subject to review by any court. Upon petition by any party subject to the Panel, the United States District Court for the District of Columbia shall enforce any final order issued by the Panel.

REQUIRED GOALS

SEC. 703. The Northeast Corridor improvement project shall be implemented by the Secretary in order to achieve the following goals:

(1) INTERCITY RAIL PASSENGER SERVICES.—(A) (i) Within 5 years after the date of enactment of this Act, the establishment of regularly scheduled and dependable intercity rail passenger service between Boston, Massachusetts, and New York, New York, operating on a 3-hour-and-40-minute schedule, including appropriate intermediate stops; and regularly scheduled and dependable intercity rail passenger service between New York, New York, and Washington, District of Columbia, operating on a 2-hour-and-40-minute schedule, including appropriate intermediate stops.

(ii) Improvements in facilities in accordance with route criteria approved by the Congress, on routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line, and from Springfield, Massachusetts, to Boston, Massachusetts, and New Haven, Connecticut, in order to facilitate compatibility with improved high-speed rail service operated on the Northeast Corridor main line.

(B) The improvement of nonoperational portions of stations (as determined by the Secretary in consultation with the National Railroad Passenger Corporation) used in intercity rail passenger service and of related facilities and fencing. Fifty percent of the cost of such improvements shall be borne by States (or local or regional transportation authorities), except that the Secretary may, in his sole discretion, fund entirely any safety-related improvement.

(C) The improvements required by this section shall be accomplished in a manner which is compatible with the accomplishment in the future of additional improvements in service levels, and which will produce the maximum labor benefit in terms of hiring persons who are presently unemployed.

(D) The submission by the Secretary and the National Railroad Passenger Corporation to the Congress of annual reports on progress achieved and work in progress and planned (including the need for further improvements) with respect to the completion of this program, including an up-to-date accounting of intercity passenger ridership, revenues from such ridership, expenses, and on-time dependability of intercity passenger trains in the Northeast Corridor.

(E) Within 2 years after the date of enactment of this Act, the submission by the Secretary to the Congress of a report on the financial and operating results of the intercity rail passenger service established under this section, on the rail freight service improved and maintained pursuant to this section, and on the practicability, considering engineering and financial feasibility and market demand, of the establishment of regularly scheduled

and dependable intercity rail passenger service between Boston, Massachusetts, and New York, New York, operating on a 3-hour schedule, including appropriate intermediate stops, and regularly scheduled and dependable intercity rail passenger service between New York, New York, and Washington, District of Columbia, operating on a 2½-hour schedule, including appropriate intermediate stops. Such report shall include a full and complete accounting of the need for improvements in intercity passenger transportation within the Northeast Corridor and a full accounting of the public costs and benefits of improving various modes of transportation to meet those needs. If such report shows (i) that further improvements are needed in intercity passenger transportation in the Northeast Corridor, and (ii) that improvements (in addition to those required by subparagraph (A)(i) of this paragraph) in the rail system in such area would return the most public benefits for the public costs involved, the Secretary shall make appropriate recommendations to the Congress. Within 6 years after the date of enactment of this Act, the Secretary shall submit an updated comprehensive report on the matters referred to in this subparagraph. Thereafter, if it is practicable, the Secretary shall facilitate the establishment of intercity rail passenger service in the Corridor which achieves the service goals specified in this subparagraph.

(2) **RAIL COMMUTER SERVICES, RAIL RAPID TRANSIT, AND LOCAL TRANSPORTATION.**—To the extent compatible with the goals contained in paragraph (1) of this section, the facilitation of improvements in and usage of rail commuter services, rail rapid transit, and local public transportation.

(3) **RAIL FREIGHT SERVICE.**—The maintenance and improvement of rail freight service to all users of rail freight service located on or adjacent to the Northeast Corridor and the maintenance and improvement of all through-freight services which remain in the Northeast Corridor, to the extent compatible with the goals contained in paragraphs (1) and (2) of this section.

(4) **PASSENGER RADIO TELEPHONE SERVICE.**—To the extent compatible with the goals contained in paragraph (1) of this section, the continuation of and improvement in passenger radio telephone service aboard trains operated in high-speed rail service between Washington, District of Columbia, and Boston, Massachusetts. The President and relevant Federal agencies, including the Federal Communications Commission, shall take such actions as are necessary to achieve this goal, subject to the provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.), including necessary licensing, construction, operation, and maintenance standards for the radio service, as determined by the Federal Communications Commission to be in the public interest, convenience, and necessity.

FUNDING

SEC. 704. (a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary—

(1) \$1,600,000,000 to remain available until expended in order to effectuate the goals of section 703(1)(A)(i) of this title and

after such goals have been achieved, the goals of section 703(1) (A) (ii) ;

(2) \$150,000,000 to remain available until expended in order to effectuate the goal of section 703(1) (B) ;

(3) for payment to the National Railroad Passenger Corporation—

(A) \$10,000,000 to remain available until expended for nonrecurring costs related to the initial assumption of control and responsibility for maintaining rail operations on the Northeast Corridor ;

(B) \$120,000,000 to acquire the properties of the Northeast Corridor ;

(C) \$650,000 to remain available until expended, for the development and utilization of mobile radio frequencies for high-speed rail passenger radio telephone service ; and

(D) \$20,000,000, to remain available until expended, for acquiring and improving properties designated in accordance with section 206(c) (1) (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c) (1) (D)).

Amounts appropriated pursuant to subparagraphs (B) and (D) of this paragraph shall be used first for the repayment, with interests, of that portion of obligations issued by the National Railroad Passenger Corporation and guaranteed pursuant to section 602 of the Rail Passenger Service Act (34 U.S.C. 602), the proceeds of which have been used for the payment of expenses resulting from the acquisition of the properties referred to in such subparagraphs (B) and (D).

(b) **LIMITATION.**—No funds appropriated under this section or pursuant to section 601 of the Rail Passenger Service Act may be used to subsidize any operating losses of commuter rail or rail freight services.

(c) **COORDINATION.**—The Secretary shall take all steps necessary to coordinate all transportation programs related to the Northeast Corridor to assure that all such programs are integrated and consistent with implementation of the Northeast Corridor improvement project under this title, including, if the Secretary finds any significant non-compliance with the implementation of the goals of section 703 of this title, the denial of funding to any noncomplying program until such noncompliance is corrected.

(d) **EMERGENCY MAINTENANCE CONTINUATION.**—After the conveyance of rail properties, pursuant to section 303(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)) and section 701(b) of this title, not to exceed \$25,000,000 of the funds appropriated pursuant to Public Law 94-6 (89 Stat. 11) shall remain available to be utilized by the Secretary for the purpose of performing emergency maintenance on the rail properties designated in accordance with section 206(c) (1) (C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c) (1) (C)).

(e) **NOTE AND MORTGAGE.**—In order to protect and secure the expenditure of funds by the United States on account of the acquisition and improvement of properties designated under section 206(c) (1) (C) and (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c) (1) (C) and (D)), the Secretary is authorized to obtain a note of indebtedness from, and to enter into a mortgage agree-

ment with, the National Railroad Passenger Corporation in order to establish a mortgage lien on such properties for the United States securing such expenditure. Such note and mortgage shall not infringe upon or supersede the authority conferred upon a National Railroad Passenger Corporation by section 701 of this Act.

(f) EXEMPTION AND IMMUNITY.—Any agreement, security, or obligation obtained by the Secretary pursuant to subsection (e) of this section, and any transaction in connection with any such agreement, security, or obligations, shall be exempt from the provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), and any other Federal, State, or local law or regulation which regulates securities or the issuance thereof. Any such agreement, security, obligation, or transaction shall enjoy all of the immunities from other laws which section 601 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791) accords to transactions which are in compliance with or implement the final system plan. The conveyance or transfer of rail properties resulting from any such agreement, security, obligation, or transaction shall enjoy the same exemptions, privileges, and immunities which the Regional Rail Reorganization Act of 1973 (including section 303(e) thereof) accords to conveyances ordered or approved by the special court under section 306(b) of such Act (45 U.S.C. 743(b)).

(g) PROTECTION FROM LIABILITY.—The Corporation, its Board of Directors, and its individual directors shall not be liable to any party for any damages, or in any other manner, by reason of the fact that the Corporation has given or issued a security or obligation to the United States pursuant to the provisions of subsection (e) of this section. The immunity granted by this subsection shall also extend to any agreement entered into by the Corporation pursuant to such subsection (e) and to any transaction in connection with. The United States shall indemnify the Corporation, its Board of Directors, and its individual directors against all costs and expenses (including fees of accountants, experts, and attorneys) actually and reasonably incurred in defending any litigation testing the legal validity of any security, obligation, agreement, or transaction, given, issued, or entered into pursuant to such subsection (e).

CONFORMING AMENDMENTS

SEC. 705. (a) Section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)) is amended by adding at the end thereof the following three new sentences: "Notwithstanding any other provision of this Act, the Corporation may enter into agreements with any other railroads and with any State (or local or regional transportation agency) responsible for providing commuter rail or rail freight services over tracks, rights-of-way, and other facilities acquired by the Corporation pursuant to authority granted by the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976. In the event of a failure to agree, the Commission shall order that rail services continue to be provided, and it shall, consistent with equitable and fair compensation principles, decide, within 180 days after the date of submission of a dispute to the Commission, the proper amount of compensation for the provision of such services. The

Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization among intercity, commuter, and rail freight services.”.

(b) Section 601(d)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(d)(1)) is amended to read as follows:

“(d) NORTHEAST CORRIDOR.—(1) Rail properties designated in accordance with section 206(c)(1)(C) of this Act shall be purchased or leased by the National Railroad Passenger Corporation. The Corporation shall negotiate an appropriate sale or lease agreement with the National Railroad Passenger Corporation for the properties designated for transfer pursuant to section 206(c)(1)(C) of this Act (45 U.S.C. 716 (c)(1)(C)), which shall take effect on the date of conveyance of such properties to the Corporation.”.

(c) Section 403(b) of the Rail Passenger Service Act (45 U.S.C. 563(b)) is amended (1) by inserting “(1)” immediately after “(b)”, and (2) by striking out the second sentence thereof and inserting in lieu thereof the following: “The Corporation shall institute such service under an agreement if the State, regional, or local agency agrees to reimburse the Corporation for 50 percent of total operating losses and associated capital costs of such service if service can be provided with the resources available to the Corporation and if it is consistent with the following requirements:

“(A) The State or agency must make an adequate assurance to the Corporation that it has sufficient resources to meet its share of the costs of such service for the period such service is to be provided under this section.

“(B) The State or agency has conducted a market analysis acceptable to the Corporation to insure that there is adequate demand to warrant such service.

An agreement made pursuant to this section may by mutual agreement be renewed for one or more additional terms of not more than 2 years.

“(2) If more than one application is made for service and all applications are consistent with the requirements of this subsection, but all the services applied for cannot be provided with the available resources of the Corporation, the Board of Directors shall decide in its discretion which application or applications best serve the public interest and can be provided with the available resources of the Corporation, except that a proposal for State support of a service deleted from the basic system shall be given preference.

“(3) The Board of Directors shall establish the basis for determining the total costs and the total revenue of the service provided pursuant to this subsection.”.

(d) Section 404(b)(4) of the Rail Passenger Service Act (45 U.S.C. 564(b)) is amended by striking out the first sentence thereof and inserting in lieu thereof the following: “For purposes of paragraph (3) of this subsection, the reasonable portion of such losses to be assumed by the State, regional, or local agency shall be equal to 50 percent of the total operating losses and associated capital costs of such service.”.

(e) Section 306 of the Rail Passenger Service Act (45 U.S.C. 546) is amended by adding at the end thereof the following new subsection:

“(i) The provisions of section 361 of the Public Health Service Act

(42 U.S.C. 264) shall not apply to railroad conveyances operated in intercity rail passenger service.”.

(f) Section 303(a)(5) of the Rail Passenger Service Act (45 U.S.C. 543(a)(5)) is amended by (1) striking out “for each meeting of the board he attends.” and inserting in lieu thereof “per diem when engaged in the actual performance of duties.”, and (2) inserting “, secretarial or professional staff support which is reasonably required” immediately after “necessary travel”.

(g) Section 305(d)(1)(B) of the Rail Passenger Service Act (45 U.S.C. 545(d)(1)(B)) is amended by striking out “for the construction of tracks or other facilities necessary to provide”.

(h) Section 402(d)(1) of the Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by striking out “the construction of tracks or other facilities necessary to provide”.

(i) Section 403(c) of the Rail Passenger Service Act (45 U.S.C. 563(c)) is amended by adding the following sentence at the end thereof: “After January 1, 1977, all route additions shall be in accordance with the Criteria and Procedures for Making Route and Service Decisions approved by the Congress pursuant to section 404(c)(3), and this subsection shall no longer apply to route additions.”.

FACILITIES WITH HISTORICAL OR ARCHITECTURAL SIGNIFICANCE

SEC. 706. Section 4(i) of the Department of Transportation Act (49 U.S.C. 1653) is amended by—

(1) redesignating paragraph (1)(C) thereof and all references thereto as paragraph (1)(D) thereof;

(2) inserting immediately after paragraph (1)(B) thereof the following new subparagraph: “(C) acquiring and utilizing space in suitable buildings of historic or architectural significance, unless the use of such space would not prove feasible and prudent compared with available alternatives.”;

(3) redesignating paragraph (4), (5), (6), (7), (8), (9), and (10) thereof as paragraphs (5), (6), (7), (8), (9), (10), and (11) thereof, respectively;

(4) inserting after paragraph (3) thereof the following new paragraph:

“(4) Acquisitions made for the purpose set forth in paragraph (1)(C) of this subsection shall be made only after consultation with the chairman of the National Endowment for the Arts and the Advisory Council on Historic Preservation.”; and

(5) amending paragraph (9) thereof, as redesignated by this section, to read as follows:

“(9)(A) There is authorized to be appropriated for the purpose set forth—

“(i) in paragraphs (1)(A) and (1)(C) of this subsection, not to exceed \$15,000,000;

“(ii) in paragraph (1)(B) of this subsection, not to exceed \$5,000,000; and

“(iii) in paragraph (1)(D) of this subsection, not to exceed \$5,000,000.

“(B) There shall be available to the National Endowment for the Arts, from the sums available under subparagraphs (A)(ii) and (A)(iii) of this paragraph, not to exceed \$2,500,000 for planning pur-

suant to paragraph (1)(D) of this subsection, and not to exceed \$2,500,000 for interim maintenance pursuant to paragraph (1)(B) of this subsection.

“(C) Sumis appropriated for the purposes of this subsection are authorized to remain available until expended.”.

TITLE VIII—LOCAL RAIL SERVICE CONTINUATION

EXTENSION OF SERVICE

SEC. 801. (a) Section 1(18) of the Interstate Commerce Act (49 U.S.C. 1(18)) is amended to read as follows:

“(18) (a) No carrier by railroad subject to this part shall—

“(i) undertake the extension of any of its lines of railroad or the construction of any additional line of railroad;

“(ii) acquire or operate any such extension or any such additional line; or

“(iii) engage in transportation over, or by means of, any such extended or additional line of railroad,

unless such extension or additional line of railroad is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or will be enhanced by the construction and operation of such extended or additional line of railroad. Upon receipt of an application for such a certificate, the Commission shall (A) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of such extended or additional line, (B) send an accurate and understandable summary of such application to a newspaper of general circulation in such affected area or areas with a request that such information be made available to the general public, (C) cause a copy of such summary to be published in the Federal Register, (D) take such other steps as it deems reasonable and effective to publicize such application, and (E) indicate in such transmissions and publications that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

“(b) The Commission shall establish, and may from time to time amend, rules and regulations (as to hearings and other matters) to govern applications for, and the issuance of, any certificate required by subdivision (a). An application for such a certificate shall be submitted to the Commission in such form and manner and with such documentation as the Commission shall prescribe. The Commission may—

“(i) issue such a certificate in the form requested by the applicant;

“(ii) issue such a certificate with modifications in such form and subject to such terms and conditions as are necessary in the public interest; or

“(iii) refuse to issue such a certificate.

“(c) Upon petition or upon its own initiative, the Commission may authorize any carrier by railroad subject to this part to extend any of its lines of railroad or to take any other action necessary for the provision of adequate, efficient, and safe facilities for the performance

of such carrier's obligations under this part. No authorization shall be made unless the Commission finds that the expense thereof will not impair the ability of such carrier to perform its obligations to the public.

"(d) Carriers by railroad subject to this part may, notwithstanding this paragraph and section 5 of this part, and without the approval of the Commission, enter into contracts, agreements, or other arrangements for the point ownership or joint use of spur, industrial, team, switching, or side tracks. The authority granted to the Commission under this paragraph shall not extend to the construction, acquisition, or operation of spur, industrial, team, switching, or side tracks if such tracks are located or intended to be located entirely within one State, and shall not apply to any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

"(e) Any construction or operation which is contrary to any provision of this paragraph, of any regulations promulgated under this paragraph, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed \$5,000 on each person who knowingly authorizes, consents to, or permits any violation of this paragraph or of the conditions of a certificate issued under this paragraph."

(b) Paragraphs (19), (20), (21), and (22) of section 1 of the Interstate Commerce Act (49 U.S.C. 1(19) through 1(22)) are repealed.

DISCONTINUANCE OR ABANDONMENT

SEC. 802. The Interstate Commerce Act is amended by inserting after section 1 thereof the following new section:

"DISCONTINUANCE AND ABANDONMENT OF RAIL SERVICE

"SEC. 1a. (1) No carrier by railroad subject to this part shall abandon all or any portion of any of its lines of railroad (hereafter in this section referred to as 'abandonment') and no such carrier shall discontinue the operation of all rail service over all or any portion of any such line (hereafter referred to as 'discontinuance'), unless such abandonment or discontinuance is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or permit such abandonment or discontinuance. An application for such a certificate shall be submitted to the Commission, together with a notice of intent to abandon or discontinue, not less than 60 days prior to the proposed effective date of such abandonment or discontinuance, and shall be in accordance with such rules and regulations as to form, manner, content, and documentation as the Commission may from time to time prescribe. Abandonments and discontinuances shall be governed by the provisions of this section or by the provisions of any other applicable Federal statute, notwithstanding any inconsistent or contrary provision in any State law or constitution, or any decision, order, or procedure of any State administrative or judicial body.

“(2) (a) Whenever a carrier submits to the Commission a notice of intent to abandon or discontinue, pursuant to paragraph (1), such carrier shall attach thereto an affidavit certifying that a copy of such notice (i) has been sent by certified mail to the chief executive officer of each State that would be directly affected by such abandonment or discontinuance, (ii) has been posted in each terminal and station on any line of railroad proposed to be so abandoned or discontinued, (iii) has been published for 3 consecutive weeks in a newspaper of general circulation in each county in which all or any part of such line of railroad is located, and (iv) has been mailed, to the extent practicable, to all shippers who have made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12 months preceding such submission.

“(b) The notice, required under subdivision (a) shall include (i) an accurate and understandable summary of the carrier's application for a certificate of abandonment or discontinuance, together with the reasons therefor, and (ii) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

“(3) During the 60-day period between the submission of a completed application for a certificate of abandonment or discontinuance pursuant to paragraph (1) and the proposed effective date of an abandonment or discontinuance, the Commission shall, upon petition, or may, upon its own initiative, cause an investigation to be conducted to assist it in determining what disposition to make of such application. An order to the Commission to implement the preceding sentence must be issued and served upon any affected carrier not less than 5 days prior to the end of such 60-day period. If no such investigation is ordered, the Commission shall issue such a certificate, in accordance with this section, at the end of such 60-day period. If such an investigation is ordered, the Commission shall order a postponement, in whole or in part, in the proposed effective date of the abandonment or discontinuance. Such postponement shall be for such reasonable period of time as is necessary to complete such investigation. Such an investigation may include, but need not be limited to, public hearings at any location reasonably adjacent to the line of railroad involved in the abandonment or discontinuance application, pursuant to rules and regulations of the Commission. Such a hearing may be held upon the request of any interested party or upon the Commission's own initiative. The burden of proof as to public convenience and necessity shall be upon the applicant for a certificate of abandonment or discontinuance.

“(4) The Commission shall, upon an order with respect to each application for a certificate of abandonment or discontinuance—

“(a) issue such certificate in the form requested by the applicant if it finds that such abandonment or discontinuance is consistent with the public convenience and necessity. In determining whether the proposed abandonment is consistent with the public convenience and necessity, the Commission shall consider whether there will be a serious adverse impact on rural and community development by such abandonment or discontinuance;

“(b) issue such certificate with modifications in such form and subject to such terms and conditions as are required, in the judgment of the Commission, by the public convenience and necessity; or

“(c) refuse to issue such certificate.

Each such certificate which is issued by the Commission shall contain provisions for the protection of the interest of employees. Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this Act and pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565). If such a certificate is issued, actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof.

“(5) (a) Each carrier by railroad subject to this part shall, within 180 days after the date of promulgation of regulations by the Commission pursuant to this section, prepare, submit to the Commission, and publish, a full and complete diagram of the transportation system operated, directly or indirectly, by such carrier. Each such diagram which shall include a detailed description of each line of railroad which is ‘potentially subject to abandonment’, as such term is defined by the Commission. Such term shall be defined by the Commission by rules and such rules may include standards which vary by region of the Nation and by railroad or group of railroads. Each such diagram shall also identify any line of railroad as to which such carrier plans to submit an application for a certificate of abandonment or discontinuance in accordance with this section. Each such carrier shall submit to the Commission and publish, in accordance with regulations of the Commission, such amendments to such diagram as are necessary to maintain the accuracy of such diagram.

“(b) The Commission shall not issue a certificate of abandonment or discontinuance with respect to a line of railroad if such abandonment or discontinuance is opposed by—

“(i) a shipper or any other person who has made significant use (as determined by the Commission in its discretion) of such line of railroad is located, in whole or in part, within such State mission of an applicable application under paragraph (1); or

“(ii) a State, or any political subdivision of a State, if such line of railroads is located, in whole or in part, within such State or political subdivision;

unless such line or railroad has been identified and described in a diagram or in an amended diagram which was submitted to the Commission under subdivision (a) at least 4 months prior to the date of submission of an application for such certificate.

“(6) (a) Whenever the Commission makes a finding, in accordance with this section, that the public convenience and necessity permit the abandonment or discontinuance of a line or railroad, it shall cause such finding to be published in the Federal Register. If, within 30 days of such publication, the Commission further finds that—

“(i) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

“(ii) it is likely that such proffered assistance would—

“(A) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line; or

“(B) cover the acquisition cost of all or any portion of such line of railroad;

the Commission shall postpone the issuance of a certificate of abandonment or discontinuance for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment or discontinuance, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

“(b) A carrier by railroad subject to this part shall promptly make available, to any party considering offering financial assistance in accordance with subdivision (a), its most recent reports on the physical condition of any line of railroad with respect to which it seeks a certificate of abandonment or discontinuance, together with such traffic, revenue, and other data as is necessary to determine the amount of assistance that would be required to continue rail service.

“(7) Whenever the Commission finds, under paragraph (6) (a) of this section, that an offer of financial assistance has been made, the Commission shall determine the extent to which the avoidable cost of providing rail service plus a reasonable return on the value of the rail properties involved exceed the revenues attributable to the line of railroad or the rail service involved.

“(8) Petitions for abandonment or discontinuance which were filed and pending before the Commission as of the date of enactment of this section or prior to the promulgation by the Commission of regulations required under this section shall be governed by the provisions of section 1 of this Act which were in effect on such date of enactment, except that paragraphs (6) and (7) of this section shall be applicable to such petitions.

“(9) Any abandonment or discontinuance which is contrary to any provision of this section, of any regulation promulgated under this section, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed \$5,000 on each person who knowingly authorizes, consents to, or permits any violation of this section or of any regulation under this section.

“(10) As used in this section:

“(a) The term ‘avoidable cost’ means all expenses which would be incurred by a carrier in providing a service which would not be incurred, in the case of discontinuance, if such service were discontinued or, in the case of abandonment, if the line over which such service was provided were abandoned. Such expenses shall include

but are not limited to all cash inflows which are foregone and all cash outflows which are incurred by such carrier as a result of not discontinuing or not abandoning such service. Such foregone cash inflows and incurred outflows shall include (i) working capital and required capital expenditures, (ii) expenditures to eliminate deferred maintenance, (iii) the current cost of freight cars, locomotives and other equipment, and (iv) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

“(b) The term ‘reasonable return’ shall, in the case of a railroad not in reorganization, be the cost of capital to such railroad (as determined by the Commission), and, in the case of a railroad in reorganization, shall be the mean cost of capital of railroads not in reorganization, as determined by the Commission.”.

LOCAL RAIL SERVICE ASSISTANCE

SEC. 803. Section 5 of the Department of Transportation Act, as added by section 401 of this Act (49 U.S.C. 1654), is amended by adding at the end thereof the following 10 new subsections:

“(f) The Secretary shall, in accordance with this section, provide financial assistance to States for rail freight assistance programs that are designed to cover—

“(1) the cost of rail service continuation payments;

“(2) the cost of purchasing a line of railroad or other rail properties to maintain existing or provide for future rail service;

“(3) the cost of rehabilitating and improving rail properties on a line of railroad to the extent necessary to permit adequate and efficient rail freight service on such line; and

“(4) the cost of reducing the costs of lost rail service in a manner less expensive than continuing rail service.

“(g) The Federal share of the costs of any rail service assistance program shall be as follows: (1) 100 percent for the period from July 1, 1976 to June 30, 1977; (2) 90 percent for the period from July 1, 1977 to June 30, 1978; (3) 80 percent for the period from July 1, 1978 to June 30, 1979; and (4) 70 percent for the period from July 1, 1979 to June 30, 1981. For the period from July 1, 1979 to June 30, 1981, the Secretary may make such adjustments in the percentage level of the Federal share as may be necessary and appropriate so as not to exceed the maximum amount of funds authorized under subsection (c) of this section. The Secretary shall, within 1 year after the date of enactment of this subsection, promulgate standards and procedures under which the State share of such cost may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided.

“(h) Each State which is, pursuant to subsection (j) of this section, eligible to receive rail service assistance is entitled to an amount equal to the total amount authorized and appropriated for such purpose, multiplied by a fraction whose numerator is the rail mileage in such State which is eligible for rail service assistance under this section and whose denominator is the rail mileage in all of the States which are eligible for rail service assistance under this section. Notwithstanding the provisions of the preceding sentence, the entitlement

of each State shall not be less than 1 percent of the funds appropriated. For purposes of this subsection, rail mileage shall be measured by the Secretary, in consultation with the Interstate Commerce Commission. Any portion of the entitlement of any State which is withheld, in accordance with this section, and any such sums which are not used or committed by a State shall be reallocated immediately, to the extent practicable, among the other States, in accordance with the formula set forth in the first sentence of this subsection.

“(i) Rail service assistance to which a State is entitled under this section may be allocated by such State to meet the cost of establishing and implementing the State rail plan required by subsection (j) of this section or by section 402(c) (1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c) (1)). Such grants shall be made available by the Secretary during the course of the State rail planning process, and shall be distributed by the Secretary as needed by the States. The amount of State rail planning grants to which each State (including each State referred to in subsection (n) (1) of this section) is entitled shall be proportionate to the amount of rail service assistance to which such State is entitled under this Act.

“(j) A State is eligible to receive rail service assistance from the Secretary if—

“(1) such State has established an adequate plan for rail services in such States as part of an overall planning process for all transportation services in such State, including a suitable process for updating, revising, and amending such plan;

“(2) such State plan is administered or coordinated by a designated State agency and provides for the equitable distribution of resources;

“(3) such State agency (A) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail transportation services, (B) employs or will employ, directly or indirectly, sufficient trained and qualified personnel, (C) maintains or will maintain adequate programs of investigation, research, promotion, and development, with provisions for public participation, and (D) is designated and directed solely, or in cooperation with other State agencies to take all practicable steps to improve transportation safety and to reduce transportation-related energy utilization and pollution;

“(4) such State provides satisfactory assurance that it has or will adopt and maintain adequate procedures for financial control, accounting, and performance evaluation in order to assure proper use of Federal funds; and

“(5) such State complies with regulations of the Secretary issued under this section and the Secretary determines that such State meets or exceeds the requirements of paragraphs (1) through (4) of this subsection.

“(k) A project is eligible in any year for financial assistance from the applicable rail service assistance program only if—

“(1) (A) the Commission has found that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, the line of railroad which is related to such project, or (B) the line of railroad or related project was eligible

for assistance under title IV of the Regional Rail Reorganization Act of 1973; and

“(2) such line, or related projects, has not previously been the subject of Federal rail service assistance under this section for more than 5 fiscal years.

“(1) The Secretary shall pay to each eligible State an amount equal to its entitlement under subsection (h) of this section, to be expended or committed to one or more projects which are eligible, pursuant to subsection (k) of this section.

“(m) (1) Each recipient of financial assistance under subsections (e) through (o) of this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project which was supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

“(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of receipts which, in the opinion of the Secretary or of the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in paragraph (1) of this subsection.

“(3) The Secretary and the Comptroller General shall regularly conduct, or cause to be conducted—

“(A) a financial audit, in accordance with generally accepted auditing standards; and

“(B) a performance audit of the activities and transactions assisted under this section, in accordance with generally accepted management principles.

Such audits may be conducted by independent certified or licensed public accountants and management consultants approved by the Secretary and the Comptroller General, and they shall be conducted in accordance with such rules and regulations as may be prescribed by the Comptroller General.

“(n) As used in this section, the term ‘State’ means—

“(1) during the period from the date of enactment of this subsection through the second anniversary of the date on which rail properties are conveyed pursuant to section 303(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(1)), any State in which a carrier by railroad subject to part I of the Interstate Commerce Act maintains any line of railroad, except that the term shall not include the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois, and the District of Columbia; and

“(2) during the period following the second anniversary of the date on which rail properties are conveyed pursuant to such sec-

tion 303(b) (1), any State in which a carrier by railroad subject to part I of the Interstate Commerce Act maintains any line of railroad.

“(o) There are authorized to be appropriated to the Secretary for the purposes of subsections (f) through (o) of this section not to exceed \$360,000,000, without fiscal year limitation. Of the foregoing sums, not to exceed \$5,000,000 shall be made available for planning grants during each of the 3 fiscal years ending June 30, 1976; September 30, 1977; and September 30, 1978. In addition, any appropriated sums remaining after the repeal of section 402 of the Regional Rail Reorganization Act of 1973 are authorized to remain available to the Secretary for purposes of subsections (f) through (o) of this section. Such sums as are appropriated are authorized to remain available until expended.”.

TERMINATION AND CONTINUATION OF RAIL SERVICES

SEC. 804. Section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744) is amended to read as follows:

“TERMINATION AND CONTINUATION OF RAIL SERVICES

“SEC. 304. (a) DISCONTINUANCE.—(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 303(b) (2) of this title, if—

“(A) the final system plan does not designate rail service to be operated over such rail properties;

“(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 day after the date of such notice or on the date of any conveyance ordered by the special court pursuant to section 303(b) (1) of this title, whichever is later; and

“(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

“(2) (A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for joint use or operation of

rail properties (under section 206(g) of this Act) or as part of a coordination project (under section 206(c) and (g) of this Act), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 303(b)(1), if the Commission determines that such rail service on such rail properties is not compensatory and if—

“(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding agreement (effective on or before the effective date of such discontinuance) to carry out such arrangement or project;

“(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

“(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 303(b)(2).

“(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus a reasonable return on the value of such rail properties, as determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.

“(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

“(D) The Commission may issue such rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

“(b) **ABANDONMENT.**—(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days’ notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.

“(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

“(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of the Interstate Commerce Act, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State.

“(c) CONTINUATION OF RAIL SERVICES.—No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section—

“(1) in the case of service and properties referred to in subsections (a) (1) and (b) (1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

“(2) if a financially responsible person (including a government entity) offers—

“(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties together with a reasonable return on the value of such properties;

“(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

“(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2)(A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

“(d) RAIL FREIGHT SERVICE.—(1) If a rail service continuation payment is offered, pursuant to subsection (c) (2) (A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

“(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

“(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

“(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties.

A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled to receive, from the person offering such payment, the difference between the revenue attributable to such properties and the avoidable

costs of providing service on such rail properties, together with a reasonable management fee, as determined by the Office.

“(2) The trustees of a railroad in reorganization shall permit rail service to be continued on any rail properties with respect to which a rail service continuation payment operating agreement has been entered into under this subsection. Such trustees shall receive a reasonable return on the value of such properties, as determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.

“(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 303(b)(1) of this title, the Commission—

“(A) shall take such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection; and

“(B) shall have authority, in accordance with the provisions of section 1(16)(b) of the Interstate Commerce Act (49 U.S.C. 1(16)(b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been offered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

“(e) **RAIL PASSENGER SERVICE.**—(1) The Corporation (or a profitable railroad) shall provide rail passenger service for a period of 180 days immediately following the date of conveyance (pursuant to section 303(b)(1) of this title), with respect to any rail properties over which a railroad in reorganization in the region, or a person leased, operated, or controlled by such a railroad, was providing rail passenger service immediately prior to such date of conveyance. Such service shall be provided on such properties regardless of whether or not such properties are designated in the final system plan as rail properties over which rail service is required to be operated, except with respect to properties over which such service is provided by the National Railroad Passenger Corporation.

“(2) If a State (or a local or regional transportation authority) was providing financial assistance to support the operation of rail passenger service, pursuant to a lease or agreement which was in effect immediately prior to the date of conveyance (pursuant to such section 303(b)(1)), the Corporation (or a profitable railroad) shall be bound by the service provisions of such lease or agreement for the duration of the 180-day mandatory operation period specified in paragraph (1) of this subsection. If a State or such an authority was pro-

viding financial assistance for the continuation of rail passenger service on rail properties immediately prior to such date of conveyance, it shall provide the same level of financial assistance during such 180-day mandatory operation period. If no such financial assistance was being provided or if no such lease or agreement was in effect immediately prior to such date of conveyance, with respect to any such rail properties, the Corporation (or a profitable railroad) shall provide the same level of rail passenger service, for the duration of such 180-day mandatory operation period, that was provided prior to such date by the applicable railroad. If—

“(A) such financial assistance is not provided;

“(B) a State (or a local or regional transportation authority) has not, by the end of such 180-day mandatory operation period, offered a rail service continuation payment pursuant to subsection (c) (2) (A) of this section;

“(C) an applicable rail service continuation payment pursuant to such subsection (c) (2) (A) is not paid when it is due; or

“(D) a payment required under a lease or agreement, pursuant to section 303(b) (2) of this title or subsection (c) (2) (B) of this section, is not paid when it is due,

the Corporation (or, where applicable, the National Railroad Passenger Corporation, a profitable railroad, or the trustee or trustees of a railroad in reorganization in the region) may (i) discontinue such rail passenger service, and (ii) with respect to rail properties not designated for inclusion in the final system plan, abandon such properties pursuant to subsections (a) and (b) of this section.

“(3) Nothing in this subsection shall be construed to affect the obligation of the Corporation (or a profitable railroad), or of the trustees of the railroads in reorganization in the region, to provide rail passenger service pursuant to section 303(b) (2) of this title or subsection (c) (2) (B) of this section.

“(4) If a State (or a local or regional transportation authority)—

“(A) offers a rail service continuation payment, pursuant to subsection (c) (2) (A) of the section and under regulations issued by the Office pursuant to section 205(d) (5) of this Act, for the operation of rail passenger service after the 180-day mandatory operation period, and

“(B) provides compensation, pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period.

the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

“(5) (A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transportation authority). The amount of such reimbursement shall be determined pursuant to section 17(a) (1) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d) (5) of this Act.

“(B) The Secretary shall reimburse States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies for rail service continuation payments for rail passenger

service pursuant to section 17(a)(2) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d)(5) of this Act.

“(C) If a dispute arises with respect to the application of any such regulations, the parties to such dispute may submit such dispute to arbitration by a third party. If the parties are unable to agree upon the selection of an arbitrator, the Chairman of the Commission shall serve in that capacity (except as to matters required to be decided by the Commission, pursuant to section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))).

“(6) Notwithstanding any other provision of this subsection, the Corporation is not obligated to provide rail passenger service on rail properties if a State (or a local or regional transportation authority) contracts for such service to be provided on such properties by an operator other than the Corporation, except that the Corporation shall, where appropriate, provide such operator with access to such properties for such purpose.

“(f) **PURCHASE.**—If an offer to purchase is made under subsection (c)(2)(C) of this section, such offer shall be accompanied by an offer of a rail service continuation payment. Such payment shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties of its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make an offer to purchase or to provide a rail service continuation payment, promptly make available its most recent reports on the physical condition of such property, together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data as are necessary to ascertain the avoidable costs of providing service over such rail properties.

“(g) **ABANDONMENT BY CORPORATION.**—After the rail system to be operated by the Corporation or a subsidiary thereof under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation or a subsidiary thereof to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity, if the Corporation or a subsidiary thereof can demonstrate that no State (or local or regional transportation authority) is willing to offer a rail service continuation payment pursuant to subsection (c) of this section. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or any subsidiary or affiliate thereof or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of the Interstate Commerce Act.

“(h) **INTERIM ABANDONMENT.**—After the date of enactment of this section and prior to the date of conveyance (pursuant to section 303(b)(1) of this title), no railroad in reorganization in the region may discontinue service or abandon any line of railroad other than in accordance with the provisions of this Act, unless (1) it is authorized

to do so by the Association, and (2) no affected State (or local or regional transportation authority) reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or the decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

“(i) DISPOSITION OF DESIGNATED RAIL PROPERTIES.—No railroad in reorganization in the region and no person leased, operated or controlled by such a railroad shall sell, transfer, encumber, or otherwise dispose of rail property, or any right or interest therein, designated for transfer to the Corporation or conveyance to a profitable railroad in the final system plan, except pursuant to section 303(b) of this title. The provisions of this subsection shall not apply to any such sale, transfer, encumbrance, or other disposition—

“(1) as to which the Association generally or specifically consents in writing;

“(2) which, prior to enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, had been specifically approved by a United States district court having jurisdiction over the reorganization of a railroad in reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205); or

“(3) following certification to the special court, pursuant to section 209(c) of the Regional Rail Reorganization Act of 1973, of any such rail properties not previously so certified.

“(j) EXEMPTION.—(1) No local public body which provides mass transportation services and which is otherwise subject to the Interstate Commerce Act shall, with respect to the provision of such services, be subject to the Interstate Commerce Act or to rules, regulations and orders promulgated under such Act, except that any such local public body shall continue to be subject to applicable Federal laws pertaining to (A) safety, (B) the representation of employees for purposes of collective bargaining, and (C) employment retirement, annuity, and unemployment systems or any other provision pertaining to dealings between employees and employers.

“(2) For purposes of this subsection, the term—

“(A) ‘local public body’ has the meaning prescribed for such term in section 12(c)(2) of the Urban Mass Transportation Act (49 U.S.C. 1608(c)(2)) and includes any person or entity which contracts with a local public body to provide transportation services; and

“(B) ‘mass transportation’ has the meaning prescribed for such term in section 12(c)(5) of the Urban Mass Transportation Act (49 U.S.C. 1608(c)(5)).”

CONTINUATION ASSISTANCE

SEC. 805. (a) Section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762) is amended to read as follows:

“RAIL SERVICE CONTINUATION ASSISTANCE

“SEC. 402. (a) GENERAL.—(1) The Secretary shall provide financial assistance in accordance with this section to assist in the provision of rail service continuation payments, the acquisition or moderniza-

tion of rail properties, including the preservation of rights-of-way for future rail service, the construction or improvement of facilities necessary to accommodate the transportation of freight previously moved by rail service, and the cost of operating and maintaining rail service facilities such as yards, shops, docks, or other facilities useful in facilitating and maintaining main line or local rail service. The Federal share of the costs of any such assistance shall be as follows: (A) 100 percent for the 12-month period following the date that rail properties are conveyed pursuant to section 303(b)(1) of this Act; and (B) 90 percent for the succeeding 12-month period.

“(2) The Secretary shall, within one year after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, promulgate standards and procedures under which the State share of such cost may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided.

“(3) The Secretary, in cooperation with the Secretary of Labor, the Association, and the Commission, shall assist States and local or regional transportation authorities in negotiating initial operating or lease agreements and shall report to the Congress not later than 30 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 on the progress of such negotiations. The Secretary may, with the concurrence of a State, enter directly into operating or lease agreements with railroads designated to provide service under section 304(d) of this Act, and with the trustees of railroads in reorganization in the region over whose rail properties such service will be provided, to assure the uninterrupted continuation of rail service after such date of conveyance. Such agreements may be entered into only during the period when the Federal share is 100 percent. Payments shall be made from the funds to which a State would otherwise be entitled under this section.

“(b) ENTITLEMENT.—(1) Each State in the region which is, pursuant to subsection (c) of this section, eligible to receive rail service continuation assistance is entitled to an amount equal to the total amount authorized and appropriated for such purpose multiplied by a fraction whose numerator is the rail mileage in such State which is eligible for rail service continuation assistance under this section and whose denominator is the rail mileage in all of the States in the region which are eligible for rail service continuation assistance under this section. Notwithstanding the preceding sentence, the entitlement of each State shall not be less than 3 percent of the funds appropriated. Not more than 5 percent of a State's entitlement may be used for rail planning activities. For purposes of this subsection, rail mileage shall be measured by the Secretary in consultation with the Interstate Commerce Commission. Any portion of the entitlement of any State which is withheld, in accordance with this section, and any such sums which are not used or committed by a State shall be reallocated immediately, to the extent practicable, among the other States in accordance with the formula set forth in this subsection. In addition to amounts provided pursuant to such rail mileage formula, funds shall also be made available to each State for the cost of operating and maintaining rail service facilities such as yards, shops, and docks which are useful in facilitating and maintaining mainline or

local rail services and which are contained in each State's rail plan, except that (A) any such assistance shall extend for a period of only 12 months following the date rail properties are conveyed under section 303(b)(1) of this Act, and (B) no railroad shall be required to operate such facilities. With respect to the limitation on assistance for rail service facilities under the preceding sentence, the Secretary shall, not later than 90 days prior to the end of such 12-month period, submit a report to the Congress in conjunction with a designated State agency, recommending future action with respect to such facilities.

"(2) For a period of not more than 1 year following the date rail properties are conveyed pursuant to section 303(b)(1) of this Act, the Secretary is authorized to provide financial assistance, from the funds to which a State would otherwise be entitled under this section for the continuation of local rail services, to any person determined by the Secretary to be financially responsible who will enter into any operating and lease agreements with railroads designated to provide service under section 304(d) of this Act, regardless of the eligibility of the State, where the applicable rail properties are located, to receive assistance under subsection (c) of this section. In any case in which a State is eligible to receive rail service continuation assistance under subsection (c) of this section, States shall have priority to receive such payments over any other person eligible under this paragraph and no other person eligible under this paragraph shall receive such payments unless his application therefor has been approved by the State agency designated under subsection (c) to administer the State plan.

"(c) ELIGIBILITY.—(1) A State in the region is eligible to receive financial assistance pursuant to subsection (b) of this section if, in any fiscal year—

"(A) the State has established a State plan for rail transportation and local rail services (herein referred to as the 'State rail plan') which is administered or coordinated by a designated State agency and such plan includes a suitable process for updating, revising, and amending such plan and provides for the equitable distribution of such financial assistance among State, local, and regional transportation authorities;

"(B) the State agency (i) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services, (ii) employs or will employ, directly or indirectly, sufficient trained and qualified personnel, and (iii) maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

"(C) the State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the State; and

"(D) the State complies with the regulations of the Secretary issued under this section.

"(2) The rail freight services which are eligible for rail service continuation assistance pursuant to this section are—

"(A) those rail services of railroads in reorganization in the region, or persons leased, operated, or controlled by any such

railroad, which the final system plan does not designate to be continued;

“(B) those rail services on rail properties referred to in section 304(a)(2) of this Act;

“(C) those rail services in the region which have been, at any time during the 5-year period prior to the date of enactment of this Act, or which, are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or by a local or regional transportation authority, or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested (at any time during the 5-year period prior to the date of enactment of this Act), or invests (subsequent to the date of enactment of this Act), substantial sums for improvement or maintenance of rail service; or

“(D) those rail services in the region with respect to which the Commission authorizes the discontinuance of rail services or the abandonment of rail properties, effective on or after the date of enactment of this Act.

“(3) The rail freight properties which are eligible to be acquired or modernized with financial assistance pursuant to subsection (b) of this section are those rail properties which are used for services eligible for rail service continuation assistance, pursuant to paragraph (2) of this subsection, including those properties which are identified, in the applicable State rail plan as having potential for future use for rail freight service.

“(4) The facilities which are eligible to be constructed or improved with financial assistance pursuant to subsection (b) of this section are those facilities in the region (including intermodal terminals and highways or bridges) which are needed in order to provide rail freight service which will no longer be available because of the discontinuance of rail freight service under section 304 of this Act or other lawful authority. No funds provided under this paragraph may be used to pay the State share of any highway projects under title 23, United States Code.

“(5) Rail properties are eligible to be acquired with financial assistance pursuant to subsection (b) of this section if (A) they are to be used for intercity or commuter rail passenger service, and (B) they pertain to a line in the region (other than rail properties designated in accordance with section 206(c)(1)(C) of this Act) which, if so acquired (i) would enable the National Railroad Passenger Corporation to serve, more efficiently, a route which it operated on November 1, 1975, (ii) would provide intercity rail passenger service designated by the Secretary under title II of the Rail Passenger Service Act, or (iii) would provide such service over a route designated for service pursuant to section 403(c) of the Rail Passenger Service Act (45 U.S.C. 563(c)).

“(d) REGULATIONS.—Within 90 days after the date of enactment of this Act, the Secretary shall issue, and may from time to time amend, regulations with respect to the provision of financial assistance under this title.

“(e) PAYMENT.—The Secretary shall pay to each eligible State in the region an amount equal to its entitlement under subsection (b) of this section.

“(f) RECORDS, AUDIT, AND EXAMINATION.—(1) Each recipient of financial assistance under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

“(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in such paragraph.

“(g) WITHHOLDING.—If the Secretary, after reasonable notice and an opportunity for a hearing to any State agency, finds that a State is not eligible for financial assistance under subsections (c) and (d) of this section, payment to such State shall not be made until there is no longer any failure to comply.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out the purposes of this section an amount not to exceed \$180,000,000 without fiscal year limitation. Such sums as are appropriated shall remain available until expended.

“(i) DEFINITION.—As used in this section, the term ‘rail service continuation assistance’ includes expenditures made by a State (or a local or regional transportation authority), at any time during a 1-year period preceding the date of enactment of this Act, or subsequent to the date of enactment of this Act, for acquisition, rehabilitation, or modernization of rail facilities on which rail freight services would have been curtailed or abandoned but for such expenditures.”.

(b) Section 403(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 763), is amended by striking the colon and the proviso and inserting in lieu thereof a period.

(c) Section 403(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 763(b)) is amended by striking the last sentence thereof and inserting in lieu thereof the following: “Notwithstanding any other provision of this title, a State may expend sums received by it under paragraphs (1) and (2) of section 402(b) of this title for acquisition and modernization pursuant to this section, or for any project designated pursuant to a State rail plan.”.

REPEAL

SEC. 806. Effective on the date of the second anniversary of the date on which rail properties are conveyed, pursuant to section 303(b) (1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743), title IV of such Act is repealed.

RAIL PASSENGER SERVICE

SEC. 807. Section 206(d)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(d)(5)) is amended to read as follows:

“(5) All properties—

“(A) transferred by the Corporation pursuant to sections 206(c)(1)(C) and 601(d) of this Act;

“(B) transferred by the Corporation to any State (or local or regional transportation authority), pursuant to subsection (c)(1)(D) of this section, or

“(C) transferred by the Corporation to any State, local or regional transportation authority, or the National Railroad Passenger Corporation, within 900 days after the date of conveyance, pursuant to section 303(b)(1) of this Act, to meet the needs of commuter or intercity rail passenger service, shall be transferred at a value related to the value received from the Corporation pursuant to the final system plan for the transfer to such Corporation of such properties. The value of any such properties, which are transferred pursuant to subparagraph (B) or (C) of this paragraph, shall be adjusted to reflect the value attributable to any applicable maintenance and improvement provided by the Corporation (to the extent the Corporation has not been released from the obligation to pay for such improvements) and the cost to the Corporation of transferring such properties.”.

EMERGENCY OPERATING ASSISTANCE

SEC. 808. The Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new section:

“EMERGENCY OPERATING ASSISTANCE

“SEC. 17. (a) The Secretary shall provide financial assistance for the purpose of reimbursing—

“(1) the Consolidated Rail Corporation, the National Railroad Passenger Corporation, other railroads, and, if applicable, the trustee or trustees of a railroad in reorganization in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) for the costs of rail passenger service operations conducted at a loss during the 180-day mandatory operation period, as required under section 304(e) of such Act (45 U.S.C. 744(e)). Such reimbursement shall cover all costs not otherwise paid by a State or a local or regional transportation authority which would have been payable by such State or authority, pursuant to regulations issued by the Office under section 205(d)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) if such regulations had been in effect on the date of conveyance of rail properties under section 303(b)(1) of such act; and

“(2) States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies with respect to rail passenger service required by section 304(e)(4) of

the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744 (e) (4)).

“(b) Financial assistance under subsection (a) of this section shall not apply to intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation which was in effect immediately prior to such date of conveyance.

“(c) Financial assistance provided pursuant to subsection (a) of this section shall be subject to such terms, conditions, requirements, and provisions as the Secretary may deem necessary and appropriate with such reasonable exceptions to requirements and provisions otherwise applicable under this Act as the Secretary may deem required by the emergency nature of the assistance authorized by this section. Nothing in this section shall authorize the Secretary to waive the provisions of section 13(c) of this Act.

“(d) The Federal share of the costs of any rail passenger service required by subsections (c) and (e) of section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744 (c) and (e)) shall be as follows:

“(1) 100 percent of the costs eligible under subsections (a) (1) or (a) (2) of this section for the 180-day mandatory operation period required by section 304(e) of such Act;

“(2) 100 percent for the 180-day period following the 180-day mandatory operation period;

“(3) 90 percent for the 12-month period succeeding the period specified in subparagraph (2) of this subsection; and

“(4) 50 percent for the 180-day period succeeding the period specified in subparagraph (3) of this subsection.

No assistance may be provided beyond the time specified in subsection (d) (3) of this section, unless the applicant for such assistance provides satisfactory assurances to the Secretary that the service for which such assistance is sought will be continued after the termination of the assistance authorized by this section.

“(e) The terms and provisions which are applicable to assistance provided pursuant to this section shall be consistent, insofar as is practicable, with the terms and provisions which are applicable to operating assistance under section 5 of this Act.

“(f) To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate amount not to exceed \$125,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed \$40,000,000 by September 30, 1976, \$95,000,000 by September 30, 1977, and \$125,000,000 by September 30, 1978, such sums to remain available until expended.”.

CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

SEC. 809. (a) STUDY.— The Secretary shall, within 360 days after the date of enactment of this Act, and in consultation with the Secretary of the Interior, the Office, the Association, the Environmental Protection Agency, any other appropriate Federal agency, any appropriate State and regional transportation agency, any other appropriate

State and local governmental entities, and any appropriate private groups and individuals, prepare and submit to the Congress and the President a report on the conversion of railroad rights-of-way. This report shall evaluate and make suggestions concerning potential alternate uses of, and public policy with respect to the conversion of, railroad rights-of-way on which service has been discontinued or is likely to be discontinued. This report shall include—

(1) an inventory statement developed by the Secretary as to all railroad rights-of-way abandoned since 1970 and significant segments of such rights-of-way which retain their linear characteristics, including, as to each, identification of the owner of record and an evaluation of its topography, characteristics, condition, approximate value, and alternate use suitability;

(2) an evaluation of the advantages of establishing a rail bank consisting of selected such rights-of-way, as a means of assuring their availability for potential railroad use in the future, a discussion of interim uses for such rights-of-way, the development of conveyancing and leasing forms, conditions, and practices to assure such availability, a projection as to the costs of such a program, and recommendations regarding the administration of such a program;

(3) a survey of existing Federal, State, and local programs utilizing or attempting to utilize abandoned railroad rights-of-way for public purposes, including an assessment of the benefits and costs of each; and

(4) an assessment and evaluation of suggestions for more effective public utilization of abandoned railroad rights-of-way, including recommendations for legislative, administrative, and regulatory action, if any, and proposals as to the optimum level of funding therefor.

(b) **INFORMATION AND FUNDING.**—The Secretary of the Interior, after consultation with the Secretary, shall, in accordance with this subsection, provide financial, educational, and technical assistance to local, State, and Federal governmental entities for programs involving the conversion of abandoned railroad rights-of-way to recreational and conservational uses, in such manner as to coordinate and accelerate such conversion, where appropriate. Such assistance shall include—

(1) encouraging and facilitating exchanges of information dealing with the availability of railroad rights-of-way, the technology involved in converting such properties to such public purposes, and related matters;

(2) making grants, in consultation with the Bureau of Outdoor Recreation of the Department of the Interior, to State and local governmental entities to enable them to plan, acquire, and develop recreational or conservational facilities on abandoned railroad rights-of-way, which grants shall cover not more than 90 percent of the cost of the planning, acquisition, or development activity of the particular project for which funds are sought;

(3) allocating funds to other Federal programs concerned with recreation or conservation in order to enable abandoned railroad rights-of-way, where appropriate, to be included in or made into national parks, national trails, national recreational areas, wild-

life refuges, or other national areas dedicated to recreational or conservational uses; and

(4) providing technical assistance to other Federal agencies States, local agencies, and private groups for the purpose of enhancing conversion projects. To increase the available information and expertise, the Secretary may contract for special studies or projects and may otherwise collect, evaluate, and disseminate information dealing with the utilization of such rights-of-way.

(c) **CONFORMING AMENDMENT.**—Section 1a of the Interstate Commerce Act, as inserted by this Act, is amended by redesignating paragraph (10) thereof as paragraph (11), and by inserting immediately after paragraph (9) the following new paragraph:

“(10) In any instance in which the Commission finds that the present or future public convenience and necessity permit abandonment or discontinuance, the Commission shall make a further finding whether such properties are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the properties proposed to be abandoned are suitable for other public purposes, it shall order that such rail properties not be sold, leased, exchanged, or otherwise disposed of except in accordance with such reasonable terms and conditions as are prescribed by the Commission, including, but not limited to, a prohibition on any such disposal, for a period not to exceed 180 days after the effective date of the order permitting abandonment unless such properties have first been offered, upon reasonable terms, for acquisition for public purposes.”

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out the provisions of this section, not to exceed \$6,000,000 for the fiscal year and the transitional fiscal period ending September 30, 1976, not to exceed \$7,000,000 for the fiscal year ending September 30, 1977, and not to exceed \$7,000,000 for the fiscal year ending September 30, 1978. Sums appropriated pursuant to this authorization are authorized to remain available until expended. Of the funds appropriated, at least four-fifths are to be made available to the Secretary of the Interior to carry out subsection (b) of this section.

RAIL BANK

SEC. 810. (a) ESTABLISHMENT.—The Secretary shall, within 180 days after the date of enactment of this Act, and after consultation with the Secretary of the Interior and the Secretary of Commerce, in accordance with this section, establish a rail bank to consist of rail trackage and other rail properties eligible under this subsection, for purposes of preserving existing service in certain areas of the United States in which fossil fuel natural resources or agricultural production is located. The Secretary may include in such rail bank any railroad trackage or other rail properties which are listed for consideration for inclusion in a rail bank under part III, section C, of the final system plan.

(b) **POWERS.**—(1) The Secretary may acquire, by lease, purchase, or in such other manner as he considers appropriate, rail properties or any interests therein eligible for inclusion in the rail bank established under this section. Except as provided in paragraph (2) of this subsec-

tion, the Secretary may hold rail properties acquired for such rail bank, and may sell, lease, grant rights over, or otherwise dispose of interests or rights in connection with such rail properties.

(2) The Secretary may not dispose of any such rail properties pursuant to paragraph (1) of this subsection if he determines, after consultation with the Secretary of the Interior and the Secretary of Commerce, that such disposition would adversely affect the availability of such properties for any continued necessary access to, and egress by rail from, facilities in which fossil fuels are being or can be extracted or processed.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this section such sums as are necessary, not to exceed \$6,000,000. Sums appropriated pursuant to this section are authorized to remain available until expended.

TITLE IX—MISCELLANEOUS PROVISIONS

COMPREHENSIVE STUDY OF RAIL SYSTEM

SEC. 901. The Secretary shall conduct a comprehensive study of the American railway system. Such study shall commence not later than 45 days after the date of enactment of this Act. Such study shall include—

(1) a showing of the potential cost savings and of possible improvements in service quality which could result from restructuring the railroads in the United States;

(2) an identification of the potential economies and improvements in performance which could result from the improvement of local and terminal operations;

(3) estimates as to potential savings in the cost of rehabilitating the United States railway system if rehabilitation is limited to those portions of such system which are essential to interstate commerce or national defense;

(4) an assessment of the extent to which common or public ownership of fixed facilities could improve the national rail transportation system;

(5) an assessment of the potential effects of alternative rail corporate structures upon the national rail transportation system;

(6) a listing, in order of descending priority, of the rail properties which should be improved to the extent necessary to permit high-speed rail passenger or freight service over such properties, in terms of the costs and benefits of such improvements and the reasons therefor; and

(7) an estimate of the potential benefits of railroad electrification for high density rail lines in the United States, and an evaluation of the costs and benefits of electrifying rail lines in the United States with a high density of traffic, including—

(A) the capital costs of such electrification and the oil fuel economies which would be derived therefrom, the ability of existing power facilities to supply the additional power required, and the amount of coal or other fossil fuels required

to generate the power necessary for railroad electrification; and

(B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution, and the disadvantages to the environment from increased use of fuels such as coal; and

(8) a survey and analysis of the railroad industry in the United States to determine its financial condition and the physical condition of its facilities, rolling stock, and equipment.

Within 720 days after the date of enactment of this Act, the Secretary shall submit a report to the Congress setting forth the results of the study conducted pursuant to this section.

STUDY OF AID TO RAIL TRANSPORTATION

SEC. 902. (a) **STUDY.**—Within 30 days after the date of the enactment of this Act, the Secretary shall initiate a comprehensive study and analysis of (1) past and present policies and methods of providing Federal aid for the construction, improvement, operation, and maintenance of rail transportation facilities and services, (2) the relationship of such policies and methods to the policies and methods of providing Federal aid for other modes of transportation, and (3) whether common carriers by railroad have been or are disadvantaged by reason of such policies and methods, and, if such carriers have been or are disadvantaged, the extent of such disadvantage. The Secretary shall examine ways and means by which future policy respecting Federal aid to rail transportation may be so determined and developed as to encourage the establishment and maintenance of an open and competitive market in which rail transportation competes on equal terms with other modes of transportation, and in which market shares are governed by customer preference based upon the service and full economic costs.

(b) **COOPERATION.**—The Commission and the Secretary of the Army are authorized and directed to cooperate fully with the Secretary in carrying out the purposes of this section, and also to submit such independent and separate reports, comments, and recommendations as they consider appropriate.

(c) **INFORMATION.**—In carrying out the purposes of this section, the Secretary may require all common carriers by railroad to file such reports containing such information as the Secretary considers necessary. The Secretary shall have the power to require by subpoena the production of such books, papers, tariffs, contracts, agreements, or other documents or data of a common carrier by railroad related to the study and analysis as he considers relevant. The Secretary may treat as confidential and privileged any document, data, or information received for such study and analysis, notwithstanding the provisions of section 552 of title 5, United States Code.

(d) **REPORT TO CONGRESS.**—Within 1 year after the date of enactment of this Act, the Secretary shall complete the study and analysis authorized and directed by this section, and shall transmit a report to the Congress containing his findings and conclusions, together with his recommendations for a sound and rational policy with respect to Federal aid to rail transportation.

STUDY OF CONGLOMERATES

SEC. 903. The Commission shall undertake a study of conglomerates and of such other corporate structures as are presently found within the rail transportation industry. The Commission shall determine what effects, if any, such diverse structures have on effective transportation, on intermodal competition, on revenue levels, and on such other aspects of national transportation as the Commission considers to be legitimate subjects of study. The Commission shall prepare a report with appropriate recommendations and shall submit its report to the Congress within 1 year after the date of enactment of this Act.

RAIL ABANDONMENT REPORT

SEC. 904. The Secretary shall submit to the Congress, within 90 days after the date of enactment of this Act, a comprehensive report on the anticipated effect, including the environmental impact, of any abandonments of lines of railroad and any discontinuances of rail service in States outside the region, as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702).

NONDISCRIMINATION

SEC. 905. (a) GENERAL.—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program, or activity funded in whole or in part through financial assistance under this Act.

(b) COMPLIANCE.—(1) Whenever the Secretary determines that any person receiving financial assistance, directly or indirectly, under this Act, or under any provision of law amended by this Act, has failed to comply with subsection (a) of this section, with any Federal civil rights statute, or with any order or regulation issued under such a statute, the Secretary shall notify such person of such determination and shall direct such person to take such action as may be necessary to assure compliance with such subsection.

(2) If, within a reasonable period of time after receiving notification pursuant to paragraph (1) of this subsection, such person fails or refuses to comply with subsection (a) of this section, the Secretary shall—

(A) direct that no further Federal financial assistance be provided to such person;

(B) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(C) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and/or

(D) take such other actions as may be provided by law.

(c) CIVIL ACTION.—Whenever a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever the Attorney General has reason to believe that any person is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may commence a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(d) **REGULATIONS.**—The Secretary may prescribe such regulations and take such actions as are necessary to monitor, enforce, and affirmatively carry out the purposes of this section.

(e) **JUDICIAL REVIEW.**—Any determinations made or actions taken by the Secretary pursuant to this section shall be subject to judicial review.

(f) **DEFINITION.**—For purposes of this section, the term “financial assistance” includes obligation guarantees.

MINORITY RESOURCE CENTER

SEC. 906. The Department of Transportation Act (49 U.S.C. 1651 et seq.) is amended (1) by redesignating sections 11 through 15 thereof as sections 12 through 16 thereof, and (2) by inserting a new section 11 as follows:

“MINORITY RESOURCE CENTER

“SEC. 11. (a) The Secretary shall, within 180 days after the date of enactment of this section, establish a Minority Resource Center (hereafter in this section referred to as the ‘Center’).

“(b) The Center shall have an Advisory Committee, which shall consist of 5 individuals appointed by the Secretary from lists of 3 qualified individuals recommended by minority-dominated trade associations in the minority business community.

“(c) The Center is authorized to—

“(1) establish and maintain, and disseminate information from, a national information clearinghouse for minority entrepreneurs and businesses, for purposes of furnishing, to such entrepreneurs and businesses, information with respect to business opportunities involving the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation’s railroads;

“(2) assist minority entrepreneurs and businesses in obtaining investment capital and debt financing;

“(3) conduct market research, planning, economic and business analyses, and feasibility studies to identify such opportunities;

“(4) design and conduct programs to encourage, promote, and assist minority entrepreneurs and businesses to secure contracts, subcontracts, and projects related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation’s railroads;

“(5) enter into such contracts, cooperative agreements, or other transactions as may be necessary in the conduct of its functions and duties;

“(6) develop support mechanisms, including venture capital, surety and bonding organizations, and management and technical services, which will enable minority entrepreneurs and businesses to take advantage of business opportunities related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation’s railroads; and

“(7) participate in, and cooperate with, all Federal programs and other programs designed to provide financial, management, and other forms of support and assistance to minority entrepreneurs and businesses.

“(d) The United States Railway Association, the Consolidated Rail Corporation, and the Secretary shall provide the Center with such relevant information, including procurement schedules, bids, and specifications with respect to particular maintenance, rehabilitation, restructuring, improvement, and revitalization projects, as may be requested by the Center in connection with the performance of its functions.

“(e) As used in this section, the term ‘minority’ includes women.”.
Approved February 5, 1976.



INTERSTATE COMMERCE ACT
PART I

INTERSTATE COMMERCE ACT

PART I

(as amended through 1976)

Title 49.—Chapter 1, U.S. Code

REGULATION IN GENERAL ; CAR SERVICE ; ALTERATION OF LINE

SEC. 1. [*As amended June 29, 1906, April 13, 1908, June 18, 1910, May 29, 1917, August 10, 1917, February 28, 1920, June 19, 1934, August 9, 1935, September 18, 1940, June 24, 1948, August 2, 1949, August 12, 1958, May 26, 1966, January 2, 1974, February 5, 1976. [49 U.S.C. § 1.]*

(1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water.

—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

NOTE.—Comparable general provision as to applicability, part II, §§ 202(a) and 203(a); part III, § 302; part IV, § 402.

Applicability of provisions of part I, II, and III to transportation subject to more than one part, see §§ 202 (c) and 303 (a), (f); and (as to motor and water transportation, respectively, by an express company) §§ 203 (a) (14) and 302 (d).

Sec. 1 (a) (5) of Title II of the act creating the Washington Metropolitan Area Transit Commission, Sept. 15, 1960, 74 Stat. 1035, as amended Oct. 9, 1962, 76 Stat. 764–5, provides that the act shall not apply to “transportation performed by a common carrier by railroad subject to part I of the Interstate Commerce Act, as amended.”

24 Stat. 379.
34 Stat. 584.
35 Stat. 60.
36 Stat. 544.
40 Stat. 101.
41 Stat. 474.
48 Stat. 1102.
49 Stat. 543.
54 Stat. 899.
62 Stat. 602.
63 Stat. 485.
72 Stat. 570.
80 Stat. 168.

Act applies to common carriers engaged in—
—transportation by railroad, or by railroad and water.
—transportation by pipe line.

Between what points act applies within United States.

Act applies to transportation only within United States.

48 Stat. 1102.

—Inapplicable to intrastate transportation.

72 Stat. 570.

48 Stat. 1102.

Act inapplicable to water transportation merely because rail charges absorbed by water line.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this part;

(b) or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this part except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

NOTE.—Comparable applicability provisions, part II, § 202 (a) ; part III, § 302 (i) ; nonapplicability to intrastate commerce, part II, § 202 (b) ; part III, §§ 302 (i), 303 (j) (k).

54 Stat. 899.

What included in term "common carrier."

48 Stat. 1102.

"Carrier" means "common carrier."

What included in term "railroad."

What included in term "transportation."

"Person" defined.

(3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this part includes an individual, firm, copartnership, corporation, company, association, or joint-stock

association; and includes a trustee, receiver, assignee, or personal representative thereof. 54 Stat. 899.

NOTE.—Comparable provisions, as to "transportation" under part II, § 203 (a) (19); part III, § 302 (h); as to "transportation facility" under part III, § 302 (g); limitation of act as to transportation intraharbor or by small watercraft, § 303 (g).

(b) For the purposes of section 5, 12 (1), 20, 204 (a) (7), 210, 220, 304 (b), 310, and 313 of this Act, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

54 Stat. 899.
"Control" construed.

NOTE.—Comparable provision, part IV, § 402 (a) (8).

(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

54 Stat. 900.

Common-carrier duties: to provide and furnish transportation. Through routes and just and reasonable rates.

Facilities and rules for through routes.

Divisions reasonable, not unduly preferential or prejudicial.

NOTE.—Compare (as to through routes and joint rates) under part II, § 216 (a), common carriers of passengers by motor vehicle; § 216 (c), common carriers of property by motor vehicle, part III, § 305 (b).

Duty to furnish transportation upon reasonable request, part III, § 305 (a); part IV, § 404 (a).

(5) (a) All charges made for any services rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. The provisions of this subdivi-

54 Stat. 900.
63 Stat. 485.
Transportation charges to be just and reasonable.

48 Stat. 1102.

90 Stat. 34.

sion shall not apply to common carriers by railroad subject to this part.

90 Stat. 35.

(b) Each rate for any service rendered or to be rendered in the transportation of persons or property by any common carrier by railroad subject to this part shall be just and reasonable. A rate that is unjust or unreasonable is prohibited and unlawful. No rate which contributes or which would contribute to the going concern value of such a carrier shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate is below a just or reasonable minimum for the service rendered or to be rendered. A rate which equals or exceeds the variable costs (as determined through formulas prescribed by the Commission) of providing a service shall be presumed, unless such presumption is rebutted by clear and convincing evidence, to contribute to the going concern value of the carrier or carriers proposing such rate (hereafter in this paragraph referred to as the 'proponent carrier'). In determining variable costs, the Commission shall, at the request of the carrier proposing the rate, determine only those costs of the carrier proposing the rate and only those costs of the specific service in question, except where such specific data and cost information is not available. The Commission shall not include in variable cost any expenses which do not vary directly with the level of service provided under the rate in question. Notwithstanding any other provision of this part, no rate shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate exceeds a just or reasonable maximum for the service rendered or to be rendered, unless the Commission has first found that the proponent carrier has market dominance over such service. A finding that a carrier has market dominance over a service shall not create a presumption that the rate or rates for such service exceed a just and reasonable maximum. Nothing in this paragraph shall prohibit a rate increase from a level which reduces the going concern value of the proponent carrier to a level which contributes to such going concern value and is otherwise just and reasonable. For the purposes of the preceding sentence, a rate increase which does not raise a rate above the incremental costs (as determined through formulas prescribed by the Commission) of rendering the service to which such rate applies shall be presumed to be just and reasonable.

"Market
dominance."

(c) As used in this part, the terms—

(i) 'market dominance' refers to an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies; and

(ii) 'rate' means any rate or charge for the transportation of persons or property.

"Rate."

(d) Within 240 days after the date of enactment of this subdivision, the Commission shall establish, by rule, standards and procedures for determining, in accordance with section 15(9) of this part, whether and when a carrier possesses market dominance over a service rendered or to be rendered at a particular rate or rates. Such rules shall be designed to provide for a practical determination without administrative delay. The Commission shall solicit and consider the recommendations of the Attorney General and of the Federal Trade Commission in the course of establishing such rules

49 USC 15.

NOTE.—Comparable provisions, part II, § 216(a)–(d) ; part III, § 305(a) ; part IV, § 404(a).

(54½) Nothing in this Act shall be construed to prevent any common carrier subject to this Act from entering into or operating under any contract with any telephone, telegraph, or cable company, for the exchange of their services.

54 Stat. 900.
63 Stat. 485.
Exchange of
services with
transmission
companies.

(6) It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful. Demurrage charges shall be computed, and rules and regulations relating to such charges shall be established, in such a manner as to fulfill the national needs with respect to (a) freight car utilization and distribution, and (b) maintenance of an adequate freight car supply available for transportation of property.

Just and
reasonable
classifications
of property
for transporta-
tion required.

Just and
reasonable
transportation
regulations
and practices
required.

—unjust and
unreasonable,
prohibited.

Rules and
regulations.

90 Stat. 46.

NOTE.—Comparable provision under part II, § 216 (a), (b) ; part III, § 305(a) ; part IV, § 404(a).

(7) No common carrier subject to the provisions of this part shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate

34 Stat. 584.
35 Stat. 60.
36 Stat. 544.
41 Stat. 475.

Free passes and
free transportation
prohibited.
62 Stat. 602.
54 Stat. 900.

Excepted
classes.

54 Stat. 900.

Interchange
of passes.

Free carriage
of passengers
in case of
calamity.

Exchange of
passes or franks
between trans-
mission and
other carriers.

35 Stat. 60.

What terms
"employees"
and "families"
include.

free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairman, and counsel of employees' organizations when such organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the Post Office Department and the Railway Mail Service and post-office inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further*, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this part: *Provided further*, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of

entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

Penalty.

Jurisdiction of offenses hereunder.

—same as for offenses under Elkins Act.

NOTE.—Compare § 22, *infra*. Provisions of this paragraph applicable to common carriers under part II, § 217 (b); part III, § 306 (c).

Special provisions: As to trustees of Cincinnati Southern Railway, their officers and agents, § 53, *infra*; members of National Guard organizations, Act of Aug. 29, 1916, 39 Stat. 646 (32 U.S.C. § 73); agents and officers of Post Office Department, Act of July 28, 1916, 39 U.S.C. § 523, *infra*. Annuitants and pensioners under Railroad Retirement Acts of 1935 and 1937 may lawfully be furnished free transportation by railroads, the same as their employees, 45 U.S.C. § 228r, *infra*.

(8) From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

34 Stat. 584.
36 Stat. 544.
41 Stat. 475.
Commodities clause.

Transportation by railroad of certain commodities prohibited.

Exception.

NOTE.—Comparable provisions, freight forwarders, § 411 (b).

(9) Any common carrier subject to the provisions of this part, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track

34 Stat. 584.
36 Stat. 544.
41 Stat. 475.
49 Stat. 543.

Carriers' duty to construct and operate switch connections.

which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission, as provided in section thirteen of this part, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this part, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Commission may order switch connections.

Enforcement of order.

NOTE.—Physical connection between rail line and docks, required, § 6 (11). Rail carrier required to extend its line or lines, and provide itself with safe and adequate car service facilities, § 1 (21).

40 Stat. 101.
41 Stat. 476.
49 Stat. 543.
What included in term "car service."

(10) The term "car service" in this part shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this part.

Character of required car service, and rules and practices.

49 Stat. 543.

(11) It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

NOTE.—Comparable provision under part II, § 216 (b).

Just and reasonable distribution of coal cars required.

90 Stat. 60.

(12) It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for

Ratings of mines during car shortage.

transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of \$100 for each offense, which may be recovered in a civil action brought by the United States. In applying the provisions of this paragraph, unit-train service and non-unit-train service shall be considered separate and distinct classes of service, and a distinction shall be made between these two classes of service and between the cars used in each class of service; questions of the justness and reasonableness of, or discrimination or preference or prejudice or advantage or disadvantage in, the distribution of cars shall be determined within each such class and not between them, notwithstanding any other provision of section 1, 2, or 3 of this Act (49 U.S.C. 1, 2, or 3), and of section 1, 2, or 3 of the Elkins Act (49 U.S.C. 41, 42, or 43). Coal cars supplied by shippers or receivers shall not be considered a part of such carrier's fleet or otherwise counted in determining questions of distribution or car count under this paragraph or any provision of law referred to in this section. As used in this paragraph, the term 'unit-train service', means the movement of a single shipment of coal of not less than 4,500 tons, tendered to one carrier, on one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, via one route."

Penalty.

90 Stat. 60.

"Unit-train service."

(13) The Commission is hereby authorized by general or special orders to require all carriers by railroad subject to this part, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all the provisions of this part relating thereto.

Commission may require filing of car-service rules and regulations.

49 Stat. 543.

Incorporation in schedules: subject to act.

(14) (a) It is the intent of the Congress to encourage the purchase, acquisition, and efficient utilization of the freight cars. In order to carry out such intent, the Commission may, upon complaint of an interested party or upon its own initiative without complaint, and after notice and an opportunity for a hearing, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including (i) the compensation to be paid for the use of any locomotive, freight car, or other vehicle, (ii) ment for the use of any locomotive or other vehicle not owned by the carrier by which it is used (and whether or not owned by another carrier, shipper, or third party), and (iii) the penalties or other sanctions for nonobserv-

54 Stat. 901.
90 Stat. 46.

Notice, hearing. Rules and regulations.

Compensation.

ance of such rules, regulations, or practices. In determining the rates of compensation to be paid for each type of freight car, the Commission shall give consideration to the transportation use of each type of freight car, to the national level of ownership of each such type of freight car, and to other factors affecting the adequacy of the national freight car supply. Such compensation shall be fixed on the basis of the elements of ownership expense involved in owning and maintaining each such type of freight car, including a fair return on the cost of such type of freight car (giving due consideration to current costs of capital, repairs, materials, parts, and labor). Such compensation may be increased by any incentive element which will, in the judgment of the Commission, provide just and reasonable compensation to freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. The Commission shall not make any incentive element applicable to any type of freight car if the Commission finds that the supply of such type of freight car is adequate. The Commission may exempt such incentive

NOTE.—Comparable provisions, part II, § 204(a) (1) ; part IV, § 403(b).

NOTE.—The effective date was extended to October 1, 1941: 55th Ann. Rep. of the Commission, p. 34.

element from the compensation to be paid by any carrier or group of carriers if the Commission finds that such an exemption is in the national interest.

54 Stat. 901.
Prohibited contracts for protective service.

(b) It shall be unlawful for any common carrier by railroad or express company, subject to this part, to make or enter into any contract, agreement, or arrangement with any person for the furnishing to or on behalf of such carrier or express company of protective service against heat or cold to property transported or to be transported in interstate or foreign commerce, or for any such carrier or express company to continue after April 1, 1941, as a party to any such contract, agreement, or arrangement unless and until such contract, agreement, or arrangement has been submitted to and approved by the Commission as just, reasonable, and consistent with the public interest: *Provided*, That if the Commission is unable to make its determination with respect to any such contract, agreement, or arrangement prior to said date, it may extend it to not later than October 1, 1941.

Approval by Commission.

Extension.

Power of Commission when emergency exists.

(15) Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so

orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making of filing of a report, according as the Commission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; and (d) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded.

NOTE.—Provisions of this paragraph applicable to freight forwarders, § 420.

Preference and expedition of military traffic during war; no embargo in time of peace against shipments for United States, section 6(8), *infra*.

(16) (a) Whenever the Commission is of opinion that any carrier by railroad subject to this part is for any reason unable to transport the traffic offered it so as to properly serve the public, it may, upon the same procedure as provided in paragraph (15), make such just and reasonable directions with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over other lines of roads, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable.

—suspension of established rules.

—directions as to car service; fixation of compensation.

—requirement of joint or common use of terminals.

Power of Commission, prescription of terms.

—preference, priority, embargoes, and movement under permit.

—priority upon certificate of President.

41 Stat. 477.
87 Stat. 1021.

Routing of traffic.

Fixation of terms when carriers disagree.

(b) Whenever any carrier by railroad is unable to transport the traffic offered it because—

(1) its cash position makes its continuing operation impossible;

(2) it has been ordered to discontinue any service by a court; or

(3) it has abandoned service without obtaining a certificate from the Commission pursuant to this section;

the Commission may, upon the same procedure as provided in paragraph (15) of this section, make such just and reasonable directions with respect to the handling, routing, and movement of the traffic available to such carrier and its distribution over such carrier's lines, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people subject to the following conditions:

(A) Such direction shall be effective for no longer than 60 days unless extended by the Commission for cause shown for an additional designated period not to exceed 180 days.

(B) No such directions shall be issued that would cause a carrier to operate in violation of the Federal Railroad Safety Act of 1970 (45 USC 421) or that would substantially impair the ability of the carrier so directed to serve adequately its own patrons or to meet its outstanding common carrier obligations.

(C) The directed carrier shall not, by reason of such Commission direction; be deemed to have assumed or to become responsible for the debts of the other carrier.

(D) The directed carrier shall hire employees of the other carrier to the extent such employees had previously performed the direct service for the other carrier, and, as to such employees as shall be so hired, the directed carrier shall be deemed to have assumed all existing employment obligations and practices of the other carrier relating thereto, including, but not limited to, agreements governing rate of pay, rules and working conditions, and all employee protective conditions commencing with and for the duration of the direction.

(E) Any order of the Commission entered pursuant to this paragraph shall provide that if, for the period of its effectiveness, the cost, as hereinafter defined, of handling, routing, and moving the traffic of another carrier over the other carrier's lines of road shall exceed the direct revenues therefor, then upon request, payment shall be made to the directed carrier, in the manner hereinafter provided and within 90 days after expiration of such order, of a sum equal to the amount by which such cost has exceeded said revenues. The term 'cost' shall mean those expenditures made or incurred in or at-

tributable to the operations as directed, including the rental or lease of necessary equipment, plus an appropriate allocation of common expenses, overheads, and a reasonable profit. Such cost shall be then currently recorded by the carrier or carriers in such manner and on such forms as by general order may be prescribed by the Commission and shall be submitted to and subject to audit by the Commission. The Commission shall certify promptly to the Secretary of the Treasury the amount of payment to be made to said carrier or carriers under the provisions of this paragraph. Payments required to be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions hereof.

NOTE.—Provisions of this paragraph applicable to freight forwarders, § 420.

(17) (a) The directions of the Commission as to car service and to the matters referred to in paragraphs (15) and (16) may be made through and by such agents or agencies as the Commission shall designate and appoint for that purpose. It shall be the duty of all carriers by railroad subject to this part, and of their officers, agents, and employees, to obey strictly and conform promptly to such orders or directions of the Commission, and in case of failure or refusal on the part of any carrier, receiver, or operating trustee to comply with any such order or direction such carrier, receiver, or trustee shall be liable to a penalty of not less than \$100 nor more than \$500 for each such offense and \$50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States: *Provided, however,* That nothing in this part shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this part and except as otherwise provided in this part.

NOTE.—Provisions of this paragraph applicable to freight forwarders, § 420.

Saving clauses as to reservation to States of power to regulate intrastate commerce by motor, §§ 202(b) and 216(e), and by water, § 303(j); as to State power to tax, § 202(b).

(b) It shall be unlawful for any person to offer or give or cause or procure to be offered or given, directly or indirectly, any money, property, or thing of value, or bribe in any other form whatsoever, to any person acting for or employed by any carrier by railroad subject to

54 Stat. 901.

Commission's
directions
given through
agencies.

Compliance
by carriers
required.

Penalty.

49 Stat. 543.

Preservation of
State police
power.

72 Stat. 570.

54 Stat. 901.
Bribery to
influence car
distribution.

Solicitation or
acceptance,
unlawful.

Penalty.

this part with intent to influence his decision or action, or because of his decision or action, with respect to the supply, distribution, or movement of cars or other vehicles, or vessels, used in the transportation of property. It shall be unlawful for any person acting for or employed by any carrier by railroad subject to this part to solicit, accept, or receive, directly or indirectly, any money, property, or thing of value, or bribe in any other form whatsoever, with intent to be influenced thereby in his decision or action, or because of his decision or action, with respect to the supply, distribution, or movement of cars or other vehicles, or vessels, used in the transportation of property. Any person who violates the provisions of this subparagraph shall be deemed guilty of a misdemeanor and be subject for each offense to a fine of not more than \$1,000, or imprisonment in the penitentiary for a term of not more than two years, or both such fine and imprisonment.

NOTE.—Provisions of this paragraph applicable to freight forwarders, § 420.

90 Stat. 125.

(18) (a) No carrier by railroad subject to this part shall—

(i) undertake the extension of any of its lines of railroad or the construction of any additional line of railroad;

(ii) acquire or operate any such extension or any such additional line; or

(iii) engage in transportation over, or by means of, any such extended or additional line of railroad, unless such extension or additional line of railroad is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or will be enhanced by the construction and operation of such extended or additional line of railroad. Upon receipt of an application for such a certificate, the Commission shall (A) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of such extended or additional line, (B) send an accurate and understandable summary of such application to a newspaper of general circulation in such affected area or areas with a request that such information be made available to the general public, (C) cause a copy of such summary to be published in the Federal Register, (D) take such other steps as it deems reasonable and effective to publicize such application, and (E) indicate in such transmissions and publications that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Publication in
newspaper.

Publication in
Federal
Register.

(b) The Commission shall establish, and may from time to time amend, rules and regulations (as to hearings and other matters) to govern applications for, and the issuance of, any certificate required by subdivision (a). An application for such a certificate shall be submitted to the Commission in such form and manner and with such documentation as the Commission shall prescribe. The Commission may—

(i) issue such a certificate in the form requested by the applicant;

(ii) issue such a certificate with modifications in such form and subject to such terms and conditions as are necessary in the public interest; or

(iii) refuse to issue such a certificate.

(c) Upon petition or upon its own initiative, the Commission may authorize any carrier by railroad subject to this part to extend any of its lines of railroad or to take any other action necessary for the provision of adequate, efficient, and safe facilities for the performance of such carrier's obligations under this part. No authorization shall be made unless the Commission finds that the expense thereof will not impair the ability of such carrier to perform its obligations to the public.

(d) Carriers by railroad subject to this part may, notwithstanding this paragraph and section 5 of this part, and without the approval of the Commission, enter into contracts, agreements, or other arrangements for the point ownership or joint use of spur, industrial, team, switching or side tracks. The authority granted to the Commission under this paragraph shall not extend to the construction, acquisition, or operation of spur, industrial, team, switching, or side tracks if such tracks are located or intended to be located entirely within one State, and shall not apply to any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

(e) Any construction or operation which is contrary to any provision of this paragraph, of any regulations promulgated under this paragraph, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed \$5,000 on each person who knowingly authorizes, consents to, or permits any violation of this paragraph or of the conditions of a certificate issued under this paragraph.

Penalty.

NOTE.—Certificates of convenience and necessity common carriers, by motor vehicle, §§ 206-208; by water, § 309 (a)-(e); permits for contract carriers, by motor vehicle, § 209; by water, § 309 (f), (g); dual operation as common and contract carrier, by motor vehicle, § 210; by water, § 310.

Suspension, change, revocation, etc., of certificates or permits, under part II, § 212. Transfer of certificate or permit, under part II, § 212(b) ; part III, § 312.

Permits, and abandonments of service, freight forwarders, § 410.

Approval of abandonment, lines of railroads undergoing reorganization, Bankruptcy Act, § 77(o) (11 U.S.C. § 205(o)).

Discontinuance or change in certain operations, § 13a, *infra*.

The following provision is contained in the St. Louis Municipal Bridge Act, approved February 13, 1924:

43 Stat. 8.

Additional
approaches,
etc., in East
St. Louis, Ill.

Subject to ap-
proval of Inter-
state Commerce
Commission.

"That the right to alter, amend, or repeal this Act is hereby expressly reserved: *Provided*. That the city of St. Louis may construct approaches, additions, or extensions, in addition to those now existing, connecting said bridge with any railroad or highway within or through the city of East St. Louis, Illinois; but before constructing such approaches, additions, or extensions the location thereof shall first have been approved by, and a certificate of public convenience and necessity therefor shall first have been obtained from, the Interstate Commerce Commission. Full jurisdiction and authority to consider and determine such questions is hereby conferred upon the Interstate Commerce Commission, in the same manner and to the same extent as in the case of other proceedings for certificates of public convenience and necessity under paragraphs (18), (19), and (20) of section 1 of the Interstate Commerce Act."

Paragraphs (19), (20), (21), and (22) of Section 1 were repealed by Public Law 94-210 (90 Stat. 127).

DISCONTINUANCE AND ABANDONMENT OF RAIL SERVICE

49 USC 1a.

90 Stat. 127.

SEC. 1a. [February 5, 1976] [49 U.S.C. 1a] (1) No carrier by railroad subject to this part shall abandon all or any portion of any of its lines of railroad (hereafter in this section referred to as 'abandonment') and no such carrier shall discontinue the operation of all rail service over all or any portion of any such line (hereafter referred to as "discontinuance"), unless such abandonment or discontinuance is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or permit such abandonment or discontinuance. An application for such a certificate shall be submitted to the Commission, together with a notice of intent to abandon or discontinue, not less than 60 days prior to the proposed effective date of such abandonment or discontinuance, and shall be in accordance with such rules and regulations as to form, manner, content, and documentation as the Commission may from time to time prescribe. Abandonments and discontinuances shall be governed by the provisions

of this section or by the provisions of any other applicable Federal statute, notwithstanding any inconsistent or contrary provision in any State law or constitution, or any decision, order, or procedure of any State administrative or judicial body. The authority granted to the Commission under this section shall not apply to (a) abandonment or discontinuance with respect to spur, industrial, team, switching, or side tracks if such tracks are located entirely within one State, or (b) any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

(2) (a) Whenever a carrier submits to the Commission a notice of intent to abandon or discontinue, pursuant to paragraph (1), such carrier shall attach thereto an affidavit certifying that a copy of such notice (i) has been sent by certified mail to the chief executive officer of each State that would be directly affected by such abandonment or discontinuance, (ii) has been posted in each terminal and station on any line of railroad proposed to be so abandoned or discontinued, (iii) has been published for 3 consecutive weeks in a newspaper of general circulation in each county in which all or any part of such line of railroad is located, and (iv) has been mailed, to the extent practicable, to all shippers who have made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12 months preceding such submission.

Notice.

Publication in newspapers.

(b) The notice required under subdivision (a) shall include (i) an accurate and understandable summary of the carrier's application for a certificate of abandonment or discontinuance, together with the reasons therefor, and (ii) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

(3) During the 60-day period between the submission of a completed application for a certificate of abandonment or discontinuance pursuant to paragraph (1) and the proposed effective date of an abandonment or discontinuance, the Commission shall, upon petition, or may, upon its own initiative, cause an investigation to be conducted to assist it in determining what disposition to make of such application. An order to the Commission to implement the preceding sentence must be issued and served upon any affected carrier not less than 5 days prior to the end of such 60-day period. If no such investigation is ordered, the Commission shall issue such a certificate, in accordance with this section, at the end of such 60-day period. If such an investigation is ordered, the Commission shall order a postponement, in whole or in part, in the proposed effective date of the abandonment or discontinuance. Such postponement shall be for such reasonable

90 Stat. 128.

Hearings.

period of time as is necessary to complete such investigation. Such an investigation may include, but need not be limited to, public hearings at any location reasonably adjacent to the line of railroad involved in the abandonment or discontinuance application pursuant to rules and regulations of the Commission. Such a hearing may be held upon the request of any interested party or upon the Commission's own initiative. The burden of proof as to public convenience and necessity shall be upon the applicant for a certificate of abandonment or discontinuance.

(4) The Commission shall, upon an order with respect to each application for a certificate of abandonment or discontinuance—

(a) issue such certificate in the form requested by the applicant if it finds that such abandonment or discontinuance is consistent with the public convenience or necessity. In determining whether the proposed abandonment is consistent with the public convenience and necessity, the Commission shall consider whether there will be a serious adverse impact on rural and community development by such abandonment or discontinuance;

(b) issue such certificate with modifications in such form and subject to such terms and conditions as are required, in the judgment of the Commission, by the public convenience and necessity; or

(c) refuse to issue such certificate.

Each such certificate which is issued by the Commission shall contain provisions for the protection of the interests of employees. Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this Act and pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565). If such certificate is issued without an investigation pursuant to paragraph (3) of this section, actual abandonment or discontinuance may take effect, in accordance with such certificate, 30 days after the date of issuance thereof. If such a certificate is issued after an investigation pursuant to such paragraph (3), actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof.

(5)(a) Each carrier by railroad subject to this part shall, within 180 days after the date of promulgation of regulations by the Commission pursuant to this section, prepare, submit to the Commission, and publish, a full and complete diagram of the transportation system operated, directly or indirectly, by such carrier. Each such diagram which shall include a detailed description of each line of railroad which is "potentially subject to abandonment", as such term is defined by the Commission. Such term shall be defined by the Commission by rules and such rules may include standards which vary by region of the Nation and by railroad or group of rail-

49 USC 5

Transportation
system dia-
gram.

roads. Each such diagram shall also identify any line of railroad as to which such carrier plans to submit an application for a certificate of abandonment or discontinuance in accordance with this section. Each such carrier shall submit to the Commission and publish, in accordance with regulations of the Commission, such amendments to such diagram as are necessary to maintain the accuracy of such diagram. 90 Stat. 129.

(b) The Commission shall not issue a certificate of abandonment or discontinuance with respect to a line of railroad if such abandonment or discontinuance is opposed by—

(i) a shipper or any other person who has made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12-month period preceding the submission of an applicable application under paragraph (1); or

(ii) a State, or any political subdivision of a State, if such line of railroad is located, in whole or in part, within such State or political subdivision;

unless such line or railroad has been identified and described in a diagram or in an amended diagram which was submitted to the Commission under subdivision (a) at least 4 months prior to the date of submission of an application for such certificate.

(6)(a) Whenever the Commission makes a finding, in accordance with this section, that the public convenience and necessity permit the abandonment or discontinuance of a line or railroad, it shall cause such finding to be published in the Federal Register. If, within 30 days of such publication, the Commission further finds that—

Publication in
Federal
Register.

(i) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(ii) it is likely that such proffered assistance would—

(A) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line; or

(B) cover the acquisition cost of all or any portion of such line of railroad;

the Commission shall postpone the issuance of a certificate of abandonment or discontinuance for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment or discontinuance, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commis-

sion of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

(b) A carrier by railroad subject to this part shall promptly make available, to any party considering offering financial assistance in accordance with subdivision (a), its most recent reports on the physical condition of any line of railroad with respect to which it seeks a certificate of abandonment or discontinuance, together with such traffic, revenue, and other data as is necessary to determine the amount of assistance that would be required to continue rail service.

(7) Whenever the Commission finds, under paragraph (6) (a) of this section, that an offer of financial assistance has been made, the Commission shall determine the extent to which the avoidable cost of providing rail service plus a reasonable return on the value of the rail properties involved exceed the revenues attributable to the line of railroad or the rail service involved.

90 Stat. 130.

(8) Petitions for abandonment or discontinuance which were filed and pending before the Commission as of the date of enactment of this section or prior to the promulgation by the Commission or regulations required under this section shall be governed by the provisions of section 1 of this Act which were in effect on such date of enactment, except that paragraphs (6) and (7) of this section shall be applicable to such petitions.

Penalty.

90 Stat. 146.

(9) Any abandonment or discontinuance which is contrary to any provision of this section, of any regulation promulgated under this section, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed \$5,000 on each person who knowingly authorizes, consents to, or permits any violation of this section or of any regulation under this section.

(10) In any instance in which the Commission finds that the present or future public convenience and necessity permit abandonment or discontinuance, the Commission shall make a further finding whether such properties are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the properties proposed to be abandoned are suitable for other public purposes, it shall order that such rail properties not be sold, leased, exchanged, or otherwise disposed of except in accordance with such reasonable terms and

conditions as are prescribed by the Commission, including, but not limited to, a prohibition on any such disposal, for a period not to exceed 180 days after the effective date of the order permitting abandonment unless such properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(11) As used in this section :

(a) The term "avoidable cost" means all expenses which would be incurred by a carrier in providing a service which would not be incurred, in the case of discontinuance, if such service were discontinued or, in the case of abandonment, if the line over which such service was provided were abandoned. Such expenses shall include but are not limited to all cash inflows which are foregone and all cash outflows which are incurred by such carrier as a result of not discontinuing or not abandoning such service. Such foregone cash inflows and incurred outflows shall include (i) working capital and required capital expenditures, (ii) expenditures to eliminate deferred maintenance, (iii) the current cost of freight cars, locomotives and other equipment, and (iv) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

"Avoidable cost."

(b) The term "reasonable return" shall, in the case of a railroad not in reorganization, be the cost of capital to such railroad (as determined by the Commission), and, in the case of a railroad in reorganization, shall be the mean cost of capital of railroads not in reorganization, as determined by the Commission.

"Reasonable return."

SPECIAL RATES AND REBATES PROHIBITED

SEC. 2. [As amended February 28, 1920, June 19, 1934, and August 9, 1935.] [49 U. S. C., § 2.] That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

24 Stat. 379.
41 Stat. 479.
48 Stat. 1102.
49 Stat. 543.

Unjust discrimination defined and prohibited.—rebates and devices.

NOTE.—See Also Elkins Act, *infra*. Comparable provisions, as to prohibition of unjust discrimination, under part II, § 216 (d) ; part III, § 305 (c) ; part IV, § 404 (b) ; as to rebating, under part II, § 217 (b) ; part III, § 306 (c) ; part IV, § 405 (c), *infra*.

PREFERENCES: INTERCHANGE OF TRAFFIC; TERMINAL
FACILITIES

24 Stat. 380.
41 Stat. 479.
44 Stat. 1447.
49 Stat. 543.
49 Stat. 607.
54 Stat. 902.
63 Stat. 485.
Undue or
unreasonable
preference or
advantage,
forbidden.

—not applica-
ble to traffic
of another
carrier.

54 Stat. 902.
Export rates,
farm commodi-
ties: policy.

Investigations
and orders to
carry out
policy.

U.S. Code title
49, § 3, note.

54 Stat. 902.
Investigation
of inter-
intra-terri-
torial rates.

SEC. 3. [As amended February 28, 1920, March 4, 1927, August 9, 1935, August 12, 1935, September 18, 1940, August 2, 1948.] [49 U. S. C. § 3.] (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier whatever description.

NOTE.—Comparable provisions, part II, § 216 (d); part III, § 305 (c); part IV, § 404 (b), (c).

(1a) It is hereby declared to be the policy of Congress that shippers of wheat, cotton, and all other farm commodities for export shall be granted export rates on the same principles as are applicable in the case of rates on industrial products for export. The Commission is hereby directed, on its own initiative or an application by interested persons, to make such investigations and conduct such hearings, and, after appropriate proceedings, to issue such orders, as may be necessary to carry out such policy.

NOTE.—The following provision constitutes § 5 (b) of Transportation Act of 1940, approved September 18, 1940. It is not in terms an amendment of the Interstate Commerce Act, and is inserted here as enacted:

“(b) The Interstate Commerce Commission is authorized and directed to institute an investigation into the rates on manufactured products, agricultural commodities, and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to part I of the Interstate Commerce Act, as amended, for the purpose of determining whether said rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other, and to enter such orders as may be appropriate for the removal of any unlawfulness which may be found

to exist: *Provided*, That the Commission in its discretion may confine its investigation to such manufactured products, agricultural commodities, and raw materials, and the rates thereon as shippers thereof may specifically request be included in such investigation."

Compare, National Transportation Policy, *supra*, and Hoch-Smith Resolution, *infra*.

(2) No carrier by railroad and no express company subject to the provisions of this part shall deliver or relinquish possession at destination of any freight or express shipment transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any carrier or express company from extending credit in connection with rates and charges on freight or express shipments transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia. Where carriers by railroad are instructed by a shipper or consignor to deliver property transported by such carriers to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 or before the expiration of six months after final judgment against the carrier in an action against the consignee begun within the period provided in paragraph (3) of section 16. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be

—confined to commodities and rates requested.

49 Stat. 543.
63 Stat. 485.
Carrier, express company, not to deliver freight until charges paid.
Exception, rules as to credit prescribed by Commission.
—Federal, State, or municipal governments or agencies.

Nonliability of consignee when agent has no beneficial title in shipment.

Reconsigned shipments.

Liability of beneficial owner.

Consignee liable, if giving erroneous statement to carrier.

Limits of time
for actions.
54 Stat. 902.

Reconsigned or
diverted ship-
ments.

Liability of
beneficial
owner.

—reconsignor
or diverter giv-
ing erroneous
information.

54 Stat. 903.

Consignor be-
coming non-
liable, notice
to delivering
carrier.

liable for such additional charges, notwithstanding the foregoing provisions of this paragraph. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 or before the expiration of six months after final judgment against the carrier in an action against the beneficial owner named by the consignee begun within the period provided in paragraph (3) of section 16. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges, and an action for the enforcement of his liability may be begun within the same period provided in the case of an action against a consignee who has given erroneous information as to the beneficial owner.

NOTE.—The amendment of § 3 (2), by § 2 (b) of the act of August 2, 1949, was made effective 6 months after date of its enactment.

Comparable provisions, collection of charges; rules: part II, § 223 · part III, § 318; part IV, § 414.

(3) If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad or a delivering express company subject to the provisions of this part, (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if

the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. An action for the enforcement of such liability either against the party to whom delivery is made or the shipper or consignor may be begun within the period provided in paragraph (3) of section 16, or before the expiration of six months after final judgment against the carrier in an action against either of such parties begun within the limitation period provided in paragraph (3) of section 16. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

—erroneous information makes consignor liable.

Limitation of action to enforce liability.

"Delivering carrier" defined.

(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

54 Stat. 903.

Facilities for interchange of traffic.

Discrimination prohibited.

54 Stat. 904.

"Connecting line" defined.

NOTE.—Comparable provision under part III, § 305 (d); as to freight forwarders, part IV, § 404 (c).

54 Stat. 904.

(5) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured

Commission may require common use of terminals.

Fixation of terms and compensation.

before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

Recovery of damages by carrier whose facilities are used.

LONG AND SHORT HAUL CHARGES; COMPETITION WITH WATER ROUTES

24 Stat. 380.
36 Stat. 547.
41 Stat. 480.
49 Stat. 543.
54 Stat. 904.
71 Stat. 292.
76 Stat. 635.

Long-and-short-haul provision.

SEC. 4. [*As amended June 18, 1910, February 28, 1920, August 9, 1935, September 18, 1940, July 11, 1957, September 27, 1962.*] [49 U.S.C. § 4.]

(1) It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *Provided further*,

Relief, by Commission, from operation of section.
71 Stat. 292.

—compensatory rates.

That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this part or part III and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: *And provided further*, That tariffs proposing rates subject to the provisions of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice: *And provided further*, That the provisions of this paragraph shall not apply to express companies subject to the provisions of this part, except that the exemption herein accorded express companies shall not be construed to relieve them from the operation of any other provision contained in this Act.

Meeting charges of carriers of same type over direct line, route.

Effective date when application approved.

Express company exemption.

(2) Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

41 Stat. 480.

Rates reduced to meet water competition not raised without finding by Commission.

NOTE.—The following paragraph is paragraph (b) of section 6 of the Transportation Act of 1940, approved September 18, 1940. Paragraph (a) of section 6 amends section 4 (1) of the Interstate Commerce Act to read as above stated. Paragraph (b) is not in terms an amendment of section 4 (1), but is inserted here as enacted.

"(b) In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed by reason of the amendments made to such paragraph by subsection (a) of this section. In the case of a carrier and heretofore subject to the provisions of such paragraph, no rate, fare, or charge lawfully in effect at the time of the enactment of this Act shall be required to be changed, by reason of the provisions of such paragraph, as amended by subsection (a) of this section, prior to six months after the enactment of this Act, or in case application for the continuance of any such existing rate, fare, or charge is filed with the Interstate Commerce Commission within such six months period, until the Commission has acted upon such application."

54 Stat. 904.
49 U.S.C.
§ 4, note.

Saving clause, rates lawfully in effect.

—carriers under part III, continuance pending action.

COMBINATIONS AND CONSOLIDATIONS OF CARRIERS

SEC. 5. [*As amended August 24, 1912, February 28, 1920, June 10, 1921, June 16, 1933, June 19, 1934, August 9, 1935, September 18, 1940, August 2, 1949, and July 27, 1965, February 5, 1976.*] [49 U. S. C. § 5.]

24 Stat. 380.
37 Stat. 566.
41 Stat. 480.
48 Stat. 217.
48 Stat. 1080.
49 Stat. 543.
54 Stat. 905.
63 Stat. 485.
79 Stat. 284.
90 Stat. 62.

Pooling of
freight and
division of
earnings for-
bidden.

Approval by
Commission.

Contracts of
water carriers
continued,
pending finding
by Commission.

(1) Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this part, it shall be unlawful for any common carrier subject to this part, part II, or part III to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof: and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided*, That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further*, That any contract, agreement, or combination to which any common carrier by water subject to part III is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on the date this paragraph as amended takes effect, if filed with the Commission within six months after such date, shall continue to be lawful except to the extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

NOTE.—Pooling agreements subject to § 5(1) not to be approved under § 5a, see § 5a(5).

Authorization of pooling of traffic in reorganization of railroads, Bankruptcy Act, § 77(f), 11 U.S.C. § 205(f), *infra*.

54 Stat. 905.
90 Stat. 65.

(2) (a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) (2) or paragraph (3)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

Consolidation or merger of carriers.

Joint acquisition, lease, or contract.

Acquisition of control by noncarrier.

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

Trackage or joint rights, railroads.

NOTE.—“Control” defined, § 1(3) (b), for purposes of § 5.

Exception, contracts for joint ownership, joint use of spur, industrial, team, switching or side tracks, § 1(18).

Transfer of certificate or permit authorized, under part II (except as provided in § 5), § 212(b); part III, § 312; part IV, § 410(g).

Temporary authority, pending proceedings upon application, part II, § 210a(b); part III, § 311(b).

Control of carrier by freight forwarder, and of freight forwarder by common carrier, part IV, § 411.

Authorization of transfer, sale, consolidation, or merger, in railroad reorganization, Bankruptcy Act, § 77(f), 11 U.S.C. § 205(f), *infra*.

By § 13(b) (1), Public Law 757, granting franchise to D.C. Transit System, 70 Stat. 602, July 24, 1956, it is provided: Section 5 of the Interstate Commerce Act shall not be construed to require the approval or authorization of the Interstate Commerce Commission of any transaction within the scope of paragraph (2) of such section 5 if the only parties to such transaction are the Corporation (including any corporation wholly controlled by the Corporation) and the Capital Transit Company (including any corporation wholly controlled by the Capital Transit Company). The issuance or creation of any securities provided for in subsection (a) shall not be subject to the provisions of section 20a of the Interstate Commerce Act.

Sec. 12 of Title II of the act creating the Washington Metropolitan Area Transit Commission, Sept. 15, 1960, 74 Stat. 1035, pertaining to consolidations, mergers, and acquisition of control provides that approval of such transactions must be obtained from that commission when any one of the carriers that are parties thereto operates in the Metropolitan District.

Sec. 3 of the act of July 10, 1962, 76 Stat. 142, provides that all power and authority granted therein to the Texas and Pacific Railway Company [to acquire securities or stock of, or property from, any other carrier, and to increase its capital stock of \$75,000,000 to not more than \$100,000,000 of capital stock outstanding] shall be subject to the provisions of the Interstate Commerce Act and any acts supplemental thereto.

(b) Whenever a transaction is proposed under subdivision (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 205(e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this part, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

NOTE.—Prohibited control by freight forwarder, part IV, § 411 (a) (1).

(c) In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or

63 Stat. 485.
90 Stat. 66.
Application
for authority.
Procedure:
notice.

Hearing, when
requisite.

Approval by
Commission;
terms.

—by railroad,
when motor
carrier in-
volved.

—findings
necessary.

54 Stat. 906.

Matters con-
sidered in
determining
applications.

54 Stat. 906.

Inclusion of
other railroads
as prerequisite
to approval.

other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph (2) except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph (2) which will result in an increase of total fixed charges, except upon a specific finding by the Commission that such increase would not be contrary to public interest.

54 Stat. 906.

Dividends and fixed charges, guaranty or assumption.

—increases not contrary to public interest.

(f) As a condition of its approval, under this paragraph (2) or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565). Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

54 Stat. 906.
90 Stat. 65.

Condition of approval, protection of railroad employees involved.

—not longer than period of employment.

Agreements permitted.

(g) In any case arising under this paragraph which involves a common carrier by railroad, the Commission shall—

90 Stat. 62.

(i) within 30 days after the date on which an application is filed with the Commission and after a certified copy of such application is furnished to the Secretary of Transportation, (A) publish notice thereof in the Federal Register, or (B) if such application is incomplete, reject such application by

Application.

Publication in Federal Register.
49 USC 17.

Notice ; publication in Federal Register.

order, which order shall be deemed to be final under the provisions of section 17;

(ii) provide that written comments on an application, as to which such notice is published, may be filed within 45 days after the publication of such notice in the Federal Register;

(iii) require that copies of any such comments shall be served upon the Secretary of Transportation and the Attorney General, each of whom shall be afforded 15 days following the date of receipt thereof to inform the Commission whether he will intervene as a party to the proceeding, and if so, to submit preliminary views on such application;

(iv) require that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Secretary of Transportation, within 90 days after the publication of notice of the application in the Federal Register.

(v) conclude any evidentiary proceedings within 240 days following the date of such publication of notice, except that in the case of an application involving the merger or control of two or more class I railroads, as defined by the Commission, the Commission shall conclude any evidentiary proceedings not more than 24 months following the date upon which notice of the application was published in the Federal Register; and

(vi) issue a final decision within 180 days following the date upon which the evidentiary proceeding is concluded.

If the Commission fails to issue a decision which is final within the meaning of section 17 within such 180-day period, it shall notify the Congress in writing of such failure and the reasons therefor. If the Commission determines that the due and timely execution of its function under this paragraph so requires, or that an application brought under this paragraph is of major transportation importance, it may order that the case be referred directly (without an initial decision by a division, individual Commissioner, board, or administrative law judge) to the full Commission for a decision which is final within the meaning of section 17.

(h) The Secretary of Transportation may propose any modification of any transaction governed by this paragraph which involves a carrier by railroad. The Secretary shall have standing to appear before the Commission in support of any such proposed modification.

(3) (a) If a merger, consolidation, unification or coordination project (as described in section 5(c) of the

Department of Transportation Act), joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to this part, is proposed by an eligible party in accordance with subdivision (b) during the period beginning on the date of enactment of this paragraph and ending on December 31, 1981, the party seeking authority for the execution or implementation of such transaction may utilize the procedure set forth in this paragraph or in paragraph (2).

(b) Any transaction described in subdivision (a) may be proposed to the Commission by—

(i) the Secretary of Transportation (hereafter in this paragraph referred to as the 'Secretary'), with the consent of the common carriers by railroad subject to this part which are parties to such transaction; or

(ii) any such carrier which, not less than 6 months prior to such submission to the Commission, submitted such proposed transaction to the Secretary for evaluation pursuant to subdivision (f).

(c) Whenever a transaction described in subdivision (a) is proposed under this paragraph, the proposing party shall submit an application for approval thereof to the Commission, in accordance with such requirements as to form, content, and documentation as the Commission may prescribe. Within 10 days after the date of receipt of such an application, the Commission shall send a notice of such proposed transaction to—

(i) the Governor of each State which may be affected, directly or indirectly, by such transaction if it is executed or implemented;

(ii) the Attorney General;

(iii) the Secretary of Labor; and

(iv) the Secretary (except where the Secretary is the proposing party).

The Commission shall accompany its notice to the Secretary with a request for the report of the Secretary pursuant to clause (v) of subdivision (f). Each such notice shall include a copy of such application; a summary of the proposed transaction involved, and the proposing party's reasons and public interest justifications therefor.

(d) The Commission shall hold a public hearing on each application submitted to it pursuant to subdivision (c), within 90 days after the date of receipt of such application. Such public hearing shall be held before a panel of the Commission duly designated for such purpose by the Commission. Such panel may utilize administrative law judges and the Rail Services Planning Office in such manner as it considers appropriate for the conduct of the hearing, the evaluation of such applica-

90 Stat. 63.

Application.

Notice.

90 Stat. 64.

Hearing.

tion and comments thereon, and the timely and reasonable determination of whether it is in the public interest to grant such application and to approve such proposed transaction pursuant to subdivision (g). Such panel shall complete such hearing within 180 days after the date of referral of such application to such panel, and it may, in order to meet such requirement, prescribe such rules and make such rulings as may tend to avoid unnecessary costs or delay. Such panel shall recommend a decision and certify the record to the full Commission for final decision, within 90 days after the termination of such hearing. The full Commission shall hear oral argument on the matter so certified, and it shall render a final decision within 120 days after receipt of the certified record and recommended decision of such panel. The Commission may, in its discretion, extend any time period set forth in this subdivision, except that the final decision of the Commission shall be rendered not later than the second anniversary of the date of receipt of such an application by the Commission.

(e) In making its recommended decision with respect to any transaction proposed under this paragraph, the duly designated panel of the Commission shall—

(i) request the views of the Secretary, with respect to the effect of such proposed transaction on the national transportation policy, as stated by the Secretary, and consider the matter submitted under subdivision (f);

(ii) request the views of the Attorney General, with respect to any competitive or anticompetitive effects of such proposed transaction; and

(iii) request the views of the Secretary of Labor, with respect to the effect of such proposed transaction on railroad employees, particularly as to whether such proposal contains adequate employee protection provisions.

Such views shall be submitted in writing and shall be available to the public upon request.

(f) Whenever a proposed transaction is submitted to the Secretary by a common carrier by railroad pursuant to clause (ii) of subdivision (b), and whenever the Secretary develops a proposed transaction for submission to the Commission pursuant to subdivision (c), the Secretary shall—

(i) publish a summary and a detailed account of the contents of such proposed transaction in the Federal Register, in order to provide reasonable notice to interested parties and the public of such proposed transaction;

(ii) give notice of such proposed transaction to the Attorney General and to the Governor of each State in which any part of the properties of the com-

Proposed
transaction.

Publication in
Federal Regis-
ter.

Notice.

mon carriers by railroad involved in such proposed transaction are situated;

(iii) conduct an informal public hearing with respect to such proposed transaction and provide an opportunity for all interested parties to submit written comments;

90 Stat. 65.

(iv) study each such proposed transaction with respect to—

(A) the needs of rail transportation in the geographical area affected;

(B) the effect of such proposed transaction of the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

(C) the environmental impact of such proposed transaction and of alternative choices of action;

(D) the effect of such proposed transaction on employment;

(E) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

(F) the rationalization of the rail system;

(G) the impact of such proposed transaction on shippers, consumers, and railroad employees;

(H) the effect of such proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

(I) whether such proposed transaction will improve rail service; and

(v) submit a report to the Commission setting forth the results of each study conducted pursuant to clause (iv), within 10 days after an application is submitted to the Commission pursuant to subdivision (c), with respect to the proposed transaction which is the subject of such study. The Commission shall give due weight and consideration to such report in making its determinations under this paragraph.

Report to
Commission.

(g) The Commission may—

(i) approve a transaction proposed under this paragraph, if the Commission determines that such proposed transaction is in the public interest; and

(ii) condition its approval of any such proposed transaction on any terms, conditions, and modifications which the Commission determines are in the public interest; or

(iii) disapprove any such proposed transaction, is if the Commission determines that such proposed transaction is not in the public interest.

In each such case, the decision of the Commission shall be accompanied by a written opinion setting forth the reasons for its action.

NOTE.—Comparable provision, part IV, § 410 (g).

54 Stat. 907.
Controlling
person consid-
ered a carrier.

—subject to
certain pro-
visions of act.

Securities,
issue or
assumption
authorized,
findings pre-
requisite.

(4) Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2), to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control: Section 20 (1) to (10), inclusive, of this part, sections 204(a) (1) and (2) and 220 of part II, and section 313 of part III, (which relate to reports, accounts, and so forth, of carriers), and section 20a (2) to (11), inclusive, of this part, and section 214 of part II, (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of section 20a of this part and of section 214 of part II, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

NOTE.—Prohibited control by freight forwarder, § 411 (a) (1).

54 Stat. 907.
90 Stat. 65.
90 Stat. 66.
Control,
unauthorized,
unlawful.

Continuance
in future
unlawful.

"Control or
management"
construed.

(5) It shall be unlawful for any person, except as provided in paragraph §§ (2) and (3) to enter into any transaction within the scope of subdivision (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (6), the words "control or management" shall be construed to include the power to exercise control or management.

NOTE.—Comparable provisions, part IV, § 402 (a) (8); control by freight forwarded prohibited, § 411 (a).

(6) For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) If such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

(7) For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

(8) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (5). If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this part: and with respect to any violation of paragraphs (2) to (13), inclusive, of this section, any penalty provision applying to such a violation by a common carrier subject to this part shall apply to such a violation by any other person.

NOTE.—Comparable provision: Part IV, § 411 (d).

(9) The district courts of the United States shall have jurisdiction upon the complaint of the Commission, al-

54 Stat. 907.
Matters considered as accomplishing common control or management

—by carrier.

—by person affiliated with carrier.

—by persons acting together one a carrier or affiliate.

54 Stat. 908.
Affiliate construed.

54 Stat. 908.
Investigation as to whether par. (4) violated.

—order preventing continuance of violation.

Provisions of paragraph additional to other penalties and remedies.

54 Stat. 908.

Injunction to restrain violation or compel obedience.

leging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

NOTE.—Comparable provision: Part IV, § 411 (e).

54 Stat. 908.

Supplemental orders.

(10) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (8), as it may deem necessary or appropriate.

54 Stat. 908.
79 Stat. 284.

NOTE.—Comparable provisions, part IV, § 411 (f); other supplemental order provisions, § 20a (3); § 20b (8); part II, § 20a applicable, § 214.

Approval unnecessary, not exceeding \$300,000 aggregate revenues involved.

(11) Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) where the only parties to the transaction are motor carriers subject to part II (but not including a motor carrier controlled by or affiliated with a carrier as defined in section 1(3)), and where the aggregate gross operating revenues of such carriers have not exceeded \$300,000 for a period of twelve consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction.

NOTE.—By § 2 of the amendatory act of July 27, 1965, it is provided that the amendment shall apply only with respect to agreements entered into on or after the sixtieth day after the date of enactment.

63 Stat. 486.
Street, suburban, interurban, electric railways.

Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) where the only parties to the transaction are street, suburban, or interurban electric railways none of which is controlled by or under common control with any carrier which is operated as part of a general steam railroad system of transportation.

54 Stat. 908.
Authority exclusive and plenary.

(12) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and

Carrier may carry into effect authorized transaction.

operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

(13) If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

NOTE.—Separability provisions, part II, § 227; part III, § 323; part IV, § 422.

(14) As used in paragraphs (2) to (13), inclusive, the term "carrier" means a carrier by railroad and an express company and a sleeping-car company, subject to this part; and a motor carrier subject to part II; and a water carrier subject to part III.

(15) Notwithstanding the provisions of paragraph (2), from and after the 1st day of July 1914, it shall be unlawful for any carrier, as defined in section 1 (3), or (after the date of the enactment of this amendatory section) any person controlling, controlled by, or under common control with, such a carrier to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which such carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does

—State authorization unnecessary.

—relief from operation of Federal or State laws.

Federal corporations not thereby created

—powers additional to those under State charter or laws

54 Stat. 909.

Separability clause.

54 Stat. 909.
63 Stat. 486.
"Carrier" defined.

37 Stat. 566.
54 Stat. 909.

Prohibited carrier interest in common carrier by water.

—competition for traffic.

Each day separate offense.

or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

NOTE.—The last three paragraphs of § 5, (14), (15), (16), and § 6 (11), (12), and parts of the Panama Canal Act, § 11 (d), 49 U. S. C. § 51, procedure, and § 11, 15 U. S. C. § 31, violators of antitrust laws, are to be considered together.

37 Stat. 566.
54 Stat. 909.

Determination
of fact of
competition.
—application.

—prayer for
order.

Inquiry into
operation when
application
not made.

Finality of
order.

(16) Jurisdiction is hereby conferred on the Commission to determine questions of fact, arising under paragraph (15), as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of such paragraph and may pray for an order permitting the continuance of any vessel or vessels already in operation, or may pray for an order under the provisions of paragraph (17). The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

NOTE.—See note to par. (14), this section, *supra*.

54 Stat. 909.

Authorization
of ownership,
lease, operation
or control

Findings, effect
upon operation
in public interest.

—effect on competition on
water route.

Applicability
of sec. 5 (2).
Saving clause,
when order
of extension
obtained.

(17) Notwithstanding the provisions of paragraph (15), the Commission shall have authority, upon application of any carrier, as defined in section 1(3), and after hearing, by order to authorize such carrier to own or acquire ownership of, to lease or operate, to have or acquire ownership of, to lease or operate, to have or acquire control of, or to have or acquire an interest in, a common carrier by water or vessel, not operated through the Panama Canal, with which the applicant does or may compete for traffic, if the Commission shall find that the continuance or acquisition of such ownership, lease, operation, control, or interest will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration: *Provided*, That if the transaction or interest sought to be entered into, continued, or acquired is within the scope of paragraph (2) (a), the provisions of paragraph (2) shall be applicable thereto in addition to the provisions of this paragraph: *And provided further*, That no such authorization shall be necessary if the carrier having the ownership, lease, operation, control, or interest has, prior to the date this section as amended becomes effective, obtained an order of extension under the provisions of paragraph (21) of this section, as in effect prior to such date, and such order is still in effect.

AGREEMENTS BETWEEN CARRIERS

SEC. 5a. [June 17, 1948, February 5, 1976.] [49 U.S.C. § 5b.]

62 Stat. 472.
90 Stat. 42.

(1) For purposes of this section—

(A) The term “carrier” means any common carrier subject to part I (other than a common carrier by railroad), part II, or part III, or any freight forwarder subject to part IV, of this Act; and

“Carrier”
defined.
90 Stat. 42.

(B) The term “antitrust laws” has the meaning assigned to such term in section I of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914.

“Antitrust
laws” defined.

(2) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval thereof is not prohibited by paragraph (4), (5), or (6) if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (9) should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this paragraph.

Application for
approval of
agreements.

Terms and
conditions of
approval.

(3) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives.

Accounts,
records, files,
inspection.

(4) The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that such agreement is of the character described in paragraph (2) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this paragraph carriers by railroad, express companies, and sleeping-car companies are carriers of one class; pipe-line companies are carriers of one class; carriers by motor vehicle are carriers of one class; carriers by

Carriers of
different
classes.

water are carriers of one class; and freight forwarders are carriers of one class.

Pooling,
division.

(5) The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction, to which section 5 of this Act is applicable.

Independent
action.

(6) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

Investigation.

(7) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standard set forth in paragraph (2), or whether any such terms and conditions are not necessary for purposes of conformity with such standard, and, after such investigation, the Commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

Approval
modified or
terminated.

Effective date.

Hearing.

(8) No order shall be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

Antitrust laws,
relief from.

(9) Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4), (5), or (6), hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

Limitation.

(10) Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be con-

strued as having effect solely with reference to the applicability of the relief provisions of paragraph (9).

NOTE.—Clayton Antitrust Act, see Title 15, *infra*.

Quotations, tenders, of rates, for United States Government, agreement approved under § 5a, see § 22(2), *infra*.

Section 204 of the Emergency Railroad Transportation Act, 1933, 49 U.S.C. § 5a, June 16, 1933, provides: "The provisions of the Interstate Commerce Act, as amended, and of all other applicable Federal statutes, as in force prior to the enactment of this title, shall remain in force, as though this title had not been enacted, with respect to the acquisition by any carrier, prior to the enactment of this title, of the control of any other carrier or carriers." The U.S. Code rennumbers § 5a of the act of June 17, 1948, as § 5b.

AGREEMENTS BETWEEN CARRIERS SUBJECT TO PART I

SEC. 5b. [February 5, 1976.] [49 U.S.C. § 5c.] (1) As used in this section, the term—

(a) 'affiliate' means any person directly or indirectly controlling, controlled by, or under common control or ownership with, any other person, and as used in this subdivision, the term (i) 'control' has the same meaning as in section 1(3)(b) of this part; and (ii) 'ownership' refers to equity holdings of 5 per centum or more in any business entity;

Definitions.

90 Stat. 42.

(b) 'antitrust laws' means the Act of July 2, 1890, as amended (15 U.S.C. 1, et seq.), the Act of October 15, 1914, as amended (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Act of August 27, 1894, as amended (15 U.S.C. 8 and 9), and chapter 592 of the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a); and

(c) 'carrier' means any common carrier by railroad subject to part I of this Act.

(2) Any carrier which is a party to an agreement, between or among two or more carriers, relating to rates, fares, classification, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, shall, under such rules and regulations as the Commission shall prescribe, apply to the Commission for approval of such agreement. The Commission shall, by order, approve any such agreement if approval thereof is not prohibited by paragraph (4) or (5) and if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (8) should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. No such approval shall be granted or continued (a) if any of the terms and condi-

tions which are prescribed under the last sentence of this paragraph are violated or not complied with, or (b) unless the Commission receives a verified written statement (and any written supplement or addendum thereto requested by the Commission) setting forth, with respect to each carrier which is a party to such agreement (i) its name, (ii) the mailing address and telephone number of its headquarter's office, (iii) the names of each of its affiliates, (iv) the names, addresses, and affiliations of each of its officers and directors and of each person who, together with any affiliate, owns or controls any debt, equity, or security interest in it having a value of \$1,000,000 or more, and (v) such other information, as the Commission directs to be included. The approval of the Commission shall be granted only upon such terms and conditions as the Commission determines are necessary to enable its approval to be granted in accordance with the standard set forth in this paragraph.

Record-
keeping.

(3) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission. All such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives. The Commission may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, copy and verify the correctness of information subject to inspection, and take depositions (a) to determine whether any such conference, bureau, committee, or other organization, or any carrier which is a party to any such agreement, has acted or is acting in compliance with the provisions of this section, regulations issued under this section, and the public interest, (b) to determine whether any such organization or carrier is inhibiting an efficient utilization of transportation resources or has established practices which are inconsistent with efficient, flexible, and economic operation, and (c) for such other purposes as the Commission considers appropriate.

49 USC 5.

(4) The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction to which section 5 of this part is applicable.

(5) (a) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration, unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action, without fear of any sanction or retaliatory action, at any time before or after any de-

termination arrived at through such procedure. In no event shall any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section—

(i) permit participation in agreements with respect to, or any voting on, single-line rates, allowances, or charges established by any carrier;

(ii) permit any carrier to participate in agreements with respect to, or to vote on, rates, allowances, or charges relating to any particular interline movement, unless such carrier can practicably participate in such movement; or

(iii) permit, provide for, or establish any procedure for joint consideration or any joint action to protest or otherwise seek the suspension of any rate or classification filed by a carrier of the same mode pursuant to section 15(8) of this part where such rate or classification is established by independent action.

49 USC 15.

As used in clause (i) of this subdivision, a single-line rate, allowance, or charge is one that is proposed by a single carrier applicable only over its own line and as to which the service (exclusive of terminal services provided by switching, drayage, or other terminal carriers or agencies) can be performed by such carrier.

(b) The limitations set forth in subdivision (a) shall not be applicable to—

(i) general rate increases or decreases, if the agreements accord the shipping public, under specified procedures, adequate notice of at least 15 days of such proposals and an opportunity to present comments thereon, in writing or otherwise, prior to the filing with the Commission of the tariffs containing such increases or decreases, or

(ii) broad tariff changes if such changes of general application or substantially general application throughout a territory or territories within which such changes are to be applicable.

In any proceeding in which it is alleged that a carrier voted or agreed upon a rate, allowance, or charge, in violation of the provisions of this section, the party alleging such violation shall have the burden of showing that such vote or agreement occurred. A showing of parallel behavior is not, by itself, sufficient to satisfy such burden.

Investigation.

(6) (a) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section or terms and conditions upon which such approval was granted, is not or are not in conformity with the standards set forth in paragraph (2) and with the public interest, and whether any such terms and conditions are not necessary or whether any

additional or modified terms and conditions are necessary for purposes of conformity with such standard. After any such investigation the Commission shall, by order, terminate or modify its approval of such an agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

Review.

(b) The Commission shall periodically, but not less than once every 3 years, review each agreement which the Commission has by order approved under this section to determine whether such agreement, or any conference, bureau, committee, or other organization established or continued pursuant to such agreement, still conforms with the standard set forth in paragraph (2) and the public interest, and to evaluate the success and effect upon the consuming public and the national rail freight transportation system of such agreement and organization. The Commission shall report to the President and to the Congress on the results of such reviews, as part of its annual report pursuant to section 21. If the Commission makes a determination that any such agreement or organization is no longer in conformity with such standard, the Commission shall by order terminate or suspend its approval thereof.

Report to
President
and Congress.
49 USC 21.

Hearing.

(7) No order shall be entered under this section except after interested parties have been afforded a reasonable opportunity for a hearing.

(8) Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4) or (5), hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

(9) Any action of the Commission under this section (a) in approving an agreement, (b) in denying an application for such approval, (c) in terminating or modifying such approval, (d) in prescribing the terms and conditions upon which such approval is to be granted, or (e) in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (8).

(10) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall periodically prepare an assessment of, and shall re-

Report to
Interstate
Commerce
Commission.

port to the Commission on (a) any possible anticompetitive features of (i) any agreements approved or submitted for approval under this section, and (ii) any conferences, bureaus, committees, or other organizations operating under such agreements, and (b) possible ways to eliminate or alleviate any such anticompetitive features, effects, or aspects in a manner that will further the goals of the national transportation policy and this Act. The Commission shall make such reports available to the public.

(11) Any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall make a final disposition with respect to any rule, rate, or charge docketed with such organization within 120 days after such proposal is docketed.

Final
disposition.

SCHEDULES AND STATEMENTS OF RATES, ETC., JOINT RAIL AND WATER TRANSPORTATION

ary 5, 1976.] [49 U. S. C. § 6.] (1) That every common substituted June 29, 1906. Amended June 18, 1910, August 24, 1912, August 29, 1916, February 28, 1920, August 9, 1935, September 18, 1940, August 2, 1949, February 5, 1976.] [49 U. S. C. § 6.] (1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that

24 Stat. 380.
25 Stat. 855.
34 Stat. 586.
37 Stat. 568.
41 Stat. 483.
49 Stat. 543.
54 Stat. 910.
63 Stat. 486.
90 Stat. 45.

Schedules,
printing and
filing; open
to public.

Components
applicable when
no joint rate
established.
90 Stat. 45.

What sched-
ules shall show.

Posting for
public inspec-
tion.

Applies to all traffic, transportation, and facilities.

they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this part.

NOTE.—Comparable provisions, part II, as to tariffs of common carriers, § 217 (a) ; as to schedules of contract carriers, § 218 (a) ; part III, as to tariffs of common carriers, § 306 (a) ; as to schedules of contract carriers, § 306 (e) ; part IV, tariffs of freight forwarders, § 405.

Applicability of provisions of § 6 and § 10 to joint interchangeable mileage tickets, § 22.

Schedules of rates, freight carried through foreign country.

(2) Any common carrier subject to the provisions of this part receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this part, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

Freight subject to customs duties when through rates not published.

Thirty days' notice of change in rates required.

(3) No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: *Provided further*, That the Commission is hereby authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules cover-

Commission may modify requirements of this section.

Rules for simplification of schedules and amendments.

ing rates, fares, charges or classifications not changed if, in its judgment, not inconsistent with the public interest.

NOTE.—Comparable provisions, part II, as to common carriers, § 217(c); as to contract carriers, § 218(a); part III, as to common carriers, § 306(d); as to contract carriers, § 306(e); part IV, as to freight forwarders, § 405(d).

(4) The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Joint tariffs to specify carriers participating.

Evidence of concurrence; effect of filing.

(5) Every common carrier subject to this part shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this part to which it may be a party: *Provided, however,* That the Commission, by regulations, may provide for exceptions from the requirements of this paragraph in the case of any class or classes of contracts, agreements, or arrangements, the filing of which, in its opinion, is not necessary in the public interest.

63 Stat. 486.

Copies of traffic contracts and arrangements to be filed.

Aug. 2, 1949.

Exceptions.

NOTE.—Comparable provisions, as to filing of contracts, etc., of motor carriers or brokers under part II, § 220(a); of carriers, etc. under part III, § 313(b); part IV, § 409(b) and § 412(a).

(6) The schedules required by this section to be filed shall be published, filed, and posted in such form and manner as the Commission by regulation shall prescribe. The Commission shall, beginning 2 years after the date of enactment of this sentence, require (a) that all rates shall be incorporated into the individual tariffs of each common carrier by railroad subject to this part or rail ratemaking association within 2 years after the initial publication of the rate, or within 2 years after a change in any rate is approved by the Commission, whichever is later, and (b) that any rate shall be null and void with respect to any such carrier or association which does not so incorporate such rate into its individual tariff. The Commission may, upon good cause shown, extend such period of time. Notice of any such extension and a statement of the reasons therefor shall be promptly transmitted to the Congress. The Commission is authorized to reject any schedule filed with it which is not in accordance with this section and with such regulations. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

54 Stat. 910.

90 Stat. 45.

Form prescribed by Commission.

Rejected schedules, use unlawful.

NOTE.—Comparable provisions, part II, § 217(a); part III, § 306(b); part IV, § 405(b).

Carrier not to engage in transportation unless schedules filed and published.

Published rates to be strictly observed.

(7) No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time, nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

NOTE.—Comparable provisions, part II, as to common carriers, § 217 (b), (d); as to contract carriers, § 218(a); part III, as to common carriers, § 306 (c), (d); as to contract carriers, § 306 (e); part IV, as to freight forwarders, § 405 (c), (e).

34 Stat. 586.
39 Stat. 604.
[Duplicated:
10 U.S.C.
§ 1362.]

Preference and expedition of military traffic during war.

No embargo as to shipments for United States.

(8) That in time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given over all other traffic for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned.

NOTE.—Preference or priority, traffic essential to national defense and security, § 1 (15); applicable, § 420.

36 Stat. 548.

Rejection of defective schedules; use unlawful.

(9) The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

NOTE.—Comparable provisions, under part II, § 217(a); part III, § 306(b); part IV, § 405(b).

36 Stat. 548.

Penalty for failure to comply with regulation.

(10) In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

NOTE.—General penal provisions for violation of regulations, etc., part II, § 222(a); part III, § 317(a); part IV, § 421(a).

(11) When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten:

37 Stat. 568.

Additional jurisdiction of Commission over rail and water traffic—

(a) To establish physical connection between the lines of the railcarrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: *Provided*, That construction required by the Commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this part.

41 Stat. 483.

—physical connection between rail lines and dock.

—Commission may determine terms of construction and operation.

—finding of convenience and necessity required.

(b) To establish proportional rates, or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the work or is carried from the port by a common carrier by water.

49 Stat. 543.
54 Stat. 910.

Additional jurisdiction over establishment of proportional rates to and from ports.

—proportional rates defined.

NOTE.—See note to section 5(14), ante.

54 Stat. 910.

(12) If any common carrier subject to this Act enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Commission may by order require such common carrier to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country.

Through arrangements by water to foreign country.

Similar arrangements with other lines required.

NOTE.—See note to section 5(14), ante.

COMBINATIONS TO PREVENT CONTINUOUS CARRIAGE OF
FREIGHT PROHIBITED

24 Stat. 382.
49 Stat. 543.

Freight car-
riage treated
as continuous
unless stoppage
in good faith.

SEC. 7. [*As amended August 9, 1935.*] [49 U.S.C. § 7.] That it shall be unlawful for any common carrier subject to the provisions of this part to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this part.

LIABILITY IN DAMAGES TO PERSONS INJURED BY VIOLATION
OF LAW

24 Stat. 382.
49 Stat. 543.

Civil liability
of common car-
riers for dam-
ages caused
by violation
of part I.

SEC. 8. [*As amended August 9, 1935.*] [49 U. S. C. § 8.] That in case any common carrier subject to the provisions of this part shall do, cause to be done, or permit to be done any act, matter, or thing in this part prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this part required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this part, together with a reasonable counsel or attorney's fees, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Attorney's fee.

NOTE.—Comparable provision, under part III, § 308 (b).

24 Stat. 382.
49 Stat. 543.
Claimant may
complaint to
Commission
or sue in
United States
court.

SEC. 9. [*As amended August 9, 1935.*] [49 U. S. C. § 9.] That any person or persons claiming to be damaged by any common carrier subject to the provisions of this part may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this part, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in

Election of
remedy.

Officers of
defendant re-
quired to tes-
tify; immunity

such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

NOTE.—Comparable provisions, part III, § 308 (c).

Reference to "circuit court" is to be treated as repealed; circuit courts were abolished Mar. 3, 1911; 36 Stat. 1167. By § 32 (a) of the act of May 24, 1949, 63 Stat. 107, it is provided that all laws of the United States in force on Sept. 1, 1948, in which reference is made to a circuit court of appeals, shall be read "court of appeals."

By § 43 of the codification of Title 28, June 25, 1948, it is provided that such a court shall be known as a court of appeals.

VIOLATION OF REGULATIONS BY CARRIER; DISCRIMINATION; PENALTIES

SEC. 10. [*As amended March 2, 1889, June 18, 1910, February 28, 1920, August 9, 1935.*] [49 U. S. C. § 10.]

(1) That any common carrier subject to the provisions of this part, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this part prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this part required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this part to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this part for which no penalty is otherwise provided, or who shall air or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property or the transmission of intelligence, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

24 Stat. 382.
25 Stat. 857.
36 Stat. 549.
41 Stat. 483.
49 Stat. 543.
Penalties for violations of act by carriers corporate officers, agents, or employees.

—fine,
imprisonment.

NOTE.—Comparable penalty provisions, part II, § 222 (a); part III, § 317 (a); part IV, § 421 (a). Sec. 10 applicable, joint interchangeable mileage tickets, § 22.

Provisions above relating to "transmission of intelligence" are doubtless repealed, Communications Act of 1934, § 602 (b).

Penalties for
false billing,
etc., by car-
riers, officers,
or agents.

(2) Any common carrier subject to the provisions of this part, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

NOTE.—Comparable provision, part II, § 222 (c) ; part III, § 317 (b) ; part IV, § 421 (b).

Penalties for
false billing,
etc., by shipper
and others.

(3) Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this part, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction

thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

—fine,
imprisonment.

NOTE.—Comparable provisions, part II, § 222 (c); part III, § 317 (c); part IV, § 421 (c).

(4) If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this part, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Penalty for inducing common carriers to discriminate unjustly.

Joint and several liability for damages.

NOTE.—See references in note to preceding paragraph.

INTERSTATE COMMERCE COMMISSION; APPOINTMENT, TERM, AND QUALIFICATION OF COMMISSIONERS

SEC. 11. [*As amended July 16, 1935, August 9, 1935.*] [49 U.S.C. § 11.] That a Commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this part shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Any Commissioner may be removed by the Presi-

24 Stat. 383.
49 Stat. 481.
49 Stat. 543.
Interstate Commerce Commissioners—
method of
appointment.

Terms.

Removal.

Party affiliation.

Disqualification for interest.

Vacancy not to impair exercise of power.
49 Stat. 481.

Commissioner to serve until successor qualified.

dent for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this part, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. Upon the expiration of his term of office a Commissioner shall continue to serve until his successor is appointed and shall have qualified.

NOTE.—Pecuniary interest of Commissioner or employee, see also § 17 (3). Comparable provision as to interest, etc., § 205 (i). See also § 24, enlargement of Commission, etc.

AUTHORITY AND DUTIES OF COMMISSION; WITNESSES; DEPOSITIONS

24 Stat. 383.
25 Stat. 858.
26 Stat. 743.
41 Stat. 484.
49 Stat. 543.
54 Stat. 910.
90 Stat. 42.
Commission to keep informed as to business of carriers.
Inquiry into and report on carrier's or controlled, etc., person's management.
54 Stat. 910.

Right to secure information.

Recommendations to Congress.

Commission to execute and enforce part I.
25 Stat. 858.

District attorneys to prosecute.

SEC. 12. [*As amended March 2, 1889, February 10, 1891, February 23, 1920, August 9, 1935, September 18, 1940, February 5, 1976.*] [49 U.S.C. § 12.] (1) (a) The Commission shall have authority, in order to perform the duties and carry out the objects for which it was created, to inquire into and report on the management of the business of all common carriers subject to the provisions of this part, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with, such carriers, to the extent that the business of such persons is related to the management of the business of one or more such carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this part; and may transmit to Congress from time to time such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary. The Commission is hereby authorized and required to execute and enforce the provisions of this part: and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this part and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the

courts of the United States; and for the purposes of this part the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Commission may require testimony and documentary evidence.

NOTE.—Comparable provisions: duty to administer part II, § 204 (a) (6); to inquire into business, etc., § 204 (a) (7); production of witnesses, testimony, papers, etc., § 205 (d).

All provisions of § 12 applicable under part III, § 316 (a), and part IV, § 417 (a).

Specific duty to administer part III, § 304 (a); part IV, § 403 (e). Inquiry into business, §§ 304 (b) and 403 (e).

“Control” as used in sec. 12, see § 1 (3) (b).

Applicability of provisions of sec. 12 to proceedings for railroad reorganization, Bankruptcy Act, § 77 (q), 11 U.S.C. § 205 (q), *infra*.

(b) Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matters relating to a common carrier by railroad subject to this part, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order. The Commission may, by order, revoke any such exemption whenever it finds, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part to the exemption person, class of persons, services, or transactions to the extent specified in such order, is necessary to effectuate the national transportation policy declared in this Act and to achieve effective regulation by the Commission, and would serve a useful public purpose.

90 Stat. 42.

Notice, hearing.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

Courts to compel witnesses to attend and testify.

NOTE.—Comparable provisions as to production of witnesses, papers, etc., part II, § 205 (d). All provisions of sec. 12 applicable under part III, § 316 (a), and part IV, § 417 (a).

Claim as to
self-crimina-
tion will not
excuse witness.
Privileged
testimony.

(3) And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this part, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

NOTE.—See notes to § 9.

Comparable provisions, under part II, § 205 (d).

All provisions of sec. 12 applicable, part III, § 316 (a) ; part IV, § 417 (a).

See also Compulsory Testimony Act; § 3, Elkins Act, *infra*.

Depositions.

Before whom
taken.

Notice.

Witnesses com-
pelled to ap-
pear and
testify.

(4) The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending¹ before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

NOTE.—Comparable provisions under part II, § 205 (d). All provisions of sec. 12 applicable, part III, § 316 (a) ; part IV, § 417 (a).

Oath or
affirmation.

(5) Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify

¹ So in original Stat.

the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Subscription
to deposition.

NOTE.—See note to par. (4), *supra*.

(6) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witness in for-
eign country.

Depositions
filed with
Commission.

NOTE.—See note to par. (4), *supra*.

(7) Witnesses whose depositions are taken pursuant to this part, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Fees, witnesses
and magis-
trates.

NOTE.—See note to par. (4), *supra*.

COMPLAINTS TO AND INVESTIGATIONS BY COMMISSION

SEC. 13. [*As amended June 18, 1910, February 28, 1920, August 9, 1935, September 18, 1940, August 12, 1958, February 5, 1976*] [49 U.S.C. § 13.] (1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this part, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such mannered and by such means as it shall deem proper.

24 Stat. 383.
36 Stat. 550.
41 Stat. 484.
49 Stat. 543.
54 Stat. 911.
72 Stat. 570.
90 Stat. 46.

Complaints to
Commission,
how and by
whom made.

Service.

Answer
required.

Investigation
when com-
plaint not
satisfied, or
grounds
appear.

NOTE.—Hearings, adjudication, rule making, appearances, etc., governed by Administrative Procedure Act §§ 1-12, Title 5, *infra*.

Comparable provisions as to complaints, part II, §§ 204 (c), 216 (e), 218 (b); part III, §§ 204 (e), 307 (a), (h); part IV, §§ 403 (f), 406 (a).

Complaints by
State railroad
commission.

Investigations
on Commis-
sion's own
motion.

Procedure and
order as upon
complaint.

Complainant's
interest imma-
terial.

54 Stat. 911.

(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commissions sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

NOTE.—Comparable provisions, investigations on Commission's own motion, § 5(7), § 15(1); part II, § 204(c), § 216(e), (f); part III, § 304(e), § 307(b); part IV, § 403(f), § 406(b), (e), § 411(d).

41 Stat. 484.

Procedure
when rates of
State, or
initiated by
President,
attacked.

Conference and
cooperation
with State
authorities.

54 Stat. 911.

(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail

itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part or part III.

NOTE.—Comparable provisions, part II: joint hearings, cooperation, etc., with States, § 205(f); part IV, § 406(f); saving clause as to intrastate rates, etc., § 216(e). Saving clause as to intrastate commerce, part III, § 303(k).

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

41 Stat. 484.
72 Stat. 570.

Preference or prejudice, or discrimination against interstate or foreign commerce.

Findings.

Commission to prescribe lawful rate, classification, regulation, or practice.

90 Stat. 46.

NOTE.—Comparable provisions, part IV, § 406(f).
Saving clause as to intrastate commerce, part II, § 216(e); part III, § 303(k).

(5) The Commission shall have exclusive authority upon application to it, to determine and prescribe intrastate rates if—

90 Stat. 46.

(a) a carrier by railroad has filed with an appropriate administrative or regulatory body of a State, a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing such a rate, fare, or charge, for the purpose of adjusting such rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and

(b) the State administrative or regulatory body has not, within 120 days after the date of such filing, acted finally on such change.

Nothing in this paragraph shall affect the authority of the Commission to institute an investigation or to act in such investigation as provided in paragraph (3) and (4) of this section.

(6) (a) Whenever, pursuant to section 553(e) of title

Publication in
Federal Register.

5, United States Code, an interested person (including a government entity) petitions the Commission for the commencement of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation relating to common carriers by railroads under this Act, the Commission shall grant or deny such petition within 120 days after the date of receipt of such petition. If the Commission grants such a petition, it shall commence an appropriate proceeding as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

(b) If the Commission denies a petition under subdivision (a) (or if it fails to act thereon within the 120-day period established by such subdivision), the petitioner may commence a civil action in an appropriate court of appeals of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate, within 60 days after the date of expiration of such 120-day period.

(c) If the petitioner, in an action commenced under subdivision (b), demonstrates to the satisfaction of the court, by a preponderance of the evidence in the record before the Commission or, in an action based on a petition on which the Commission failed to act, in a new proceeding before such court, that the action requested in such petition to the Commission is necessary and that the failure of the Commission to take such action will result in the continuation of practices which are not consistent with the public interest or in accordance with this Act, such court shall order the Commission to initiate such action.

(d) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the initiation of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation under this Act.

Civil action.
"Commission."

(e) As used in this paragraph, the term "Commission" includes any division, individual Commissioner, administrative law judge, employee board, or any other person authorized to act on behalf of the Commission in any part of the proceeding for the issuance, amendment, or repeal of any order, rule, or regulation under this Act relating to common carriers by railroad.

DISCONTINUANCE OR CHANGE OF CERTAIN OPERATIONS OR SERVICES

SEC. 13a. [August 12, 1958.] [49 U.S.C. § 13a.] (1)
A carrier or carriers subject to this part, if their rights with respect to the discontinuance or charge, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any

other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) and court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

Operation or service, subject to State laws, regulations.

Notice.

Continuance pending hearing.

Continuance, restoration, for period not exceeding one year.

Operation,
service,
wholly
within a
State.

Petition to
Commission;
hearing,
findings.

Notice to
Governor.

Cooperation,
facilities, of
State.

(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this part, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operations or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph.

REPORTS AND DECISIONS OF COMMISSION

24 Stat. 384.
25 Stat. 859.
34 Stat. 589.
41 Stat. 484.

Commission to
make report,
with conclu-
sions and
order.

Report in repa-
ration cases.

SEC. 14. [*Amended March 2, 1889, June 29, 1906, February 28, 1920.*] [49 U.S.C. § 14.] (1) That when-

ever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

NOTE.—Provisions of § 14 applicable under part II, § 204(d); as to part III, compare § 316(c); part IV, § 417(c).

Reports en-
tered of
record;
service.

(2) All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and

to any common carrier that may have been complained of.

NOTE.—See note to par. (1), *supra*.

(3) The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

NOTE.—See note to par. (1), *supra*.

DETERMINATION OF RATES ROUTES, ETC.; ROUTING OF TRAFFIC; DISCLOSURES, ETC.

SEC. 15. [*As amended June 29, 1906, June 18, 1910, February 28, 1920, March 4, 1927, June 19, 1934, August 9, 1935, September 18, 1940, February 5, 1976.*] [49 U.S.C. § 15.] (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall

25 Stat. 859.
Reports and
decisions com-
petent as
evidence.

Annual re-
ports, printing.

24 Stat. 384.
34 Stat. 589.
36 Stat. 551.
41 Stat. 484-8.
44 Stat. 1447.
48 Stat. 1102.
49 Stat. 543.
54 Stat. 911.
90 Stat. 34.

Determination
of rates, classi-
fications, regu-
lations or prac-
tices, by
Commission.

48 Stat. 1102.

Commission
may fix maxi-
mum, minimum
or precise
rates.
54 Stat. 911.

Carriers to
cease and de-
sist from viola-
tions found.

Orders effective
as prescribed,
and to be
obeyed.

adopt the classification and shall conform to and observe the regulation or practice so prescribed.

NOTE.—Comparable provisions, part II, §§ 216(e) and 218(b) ; part III, §§ 307 (b), (h), and 315(b) ; part IV, § 406(b).

General authority to issue orders, part II, § 204(a) (6) ; part III, § 304(a) ; part IV, § 403(a).

Time when orders take effect

Continuance in effect of order.

90 Stat. 48.

(2) Except as otherwise provided in this part, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time as the Commission may prescribe. Such orders shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

NOTE.—Comparable provisions, under part II, § 221 (b) ; part III, § 315 (d) ; part IV, § 416 (c).

54 Stat. 911.

Through routes and joint rates etc., with rail and with water carriers.

Divisions, operating terms and conditions

Street electric passenger railways excepted.

Burden of proof, when cancellation suspended.

90 Stat. 39.

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section. With respect to carriers by railroad, in determining whether any such cancellation or proposed cancellation involving any common carrier by railroad is consistent with the public interest, the Commission shall, to the extent applicable, (a) compare the distance traversed and the average transportation time and expense required using the through route, and the distance traversed and the average transportation time and expense required using alternative routes, between the points served by such through route, (b) consider any reduction in en-

ergy consumption which may result from such cancellation, and (c) take into account the overall impact of such cancellation on the shippers and carriers who are affected thereby.

NOTE.—Comparable provisions, part II, § 216 (e); part III, § 307 (d).

(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

NOTE.—As to nonapplicability of provisions of § 15 (4) in investigation and suspension of cancellations of joint rates, etc., under part III, see § 307 (d).

(5) Transportation wholly by railroad of ordinary livestock in car-load lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine

54 Stat. 911.

Limitation on power to prescribe through routes.

Establishment of temporary through routes in emergency.

41 Stat. 486

Unloading and reloading ordinary livestock at public stockyards.

When extra charge may be made.

Commission to
prescribe or
approve rules.

regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

41 State. 486.
90 Stat. 34.

Commission
may prescribe
divisions of
joint rates.

Divisions made
retroactive.

Considerations
in determining
divisions.

(6) (a) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers: and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

90 Stat. 34.

(b) Notwithstanding any other provision of law, the Commission shall, within 180 days after the date of enactment of this subdivision, establish, by rule, standards and procedures for the conduct of proceedings for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise) in accordance with the provisions of this paragraph. The Commission shall issue a final order in all such proceedings within 270 days after the submission to the Commission of a case. If the Commission is unable to issue such a final

order within such time, it shall issue a report to the Congress setting forth the reasons for such inability.

Report to
Congress.

(c) All evidentiary proceedings conducted pursuant to this paragraph shall be completed, in a case brought upon a complaint, within 1 year following the filing of the complaint, or, in a case brought upon the Commissions initiative, within 2 years following the commencement of such proceeding, unless the Commission finds that such a proceeding must be extended to permit a fair and expeditious completion of the proceeding. If the Commission is unable to meet any such time requirement, it shall issue a report to the Congress setting forth the reasons for such inability.

Report to
Congress.

(d) Whenever a proceeding for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise established) is commenced by the filing of a complaint with the Commission, the complaining carrier or carriers shall (i) attach thereto all of the evidence in support of their position, and (ii) during the course of such proceeding, file only rebuttal or reply evidence unless otherwise directed by order of the Commission. Upon receipt of a notice of intent to file a complaint pursuant to this paragraph, the Commission shall accord, to the party filing such notice, the same right to discovery that would be accorded to a party filing a complaint pursuant to this paragraph.

NOTE.—Comparable provisions, part II, § 216 (f); part III, § 307 (e).

(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become

44 Stat. 1447.

Investigation
of new rate,
classification,
regulation, or
practice.

Suspension
pending
decision.

Period of
suspension.

Orders as to
such rate, etc.

Expiration of suspension period prior to decision.

New rate, etc., becomes effective.

Accounting required for increased amounts received.

Refund of increased amounts required if change not justified.

54 Stat. 912.

Burden of proof as to reasonableness of charged rates.

Preference given suspension cases.
90 Stat 36.

90 Stat. 37.

Hearing notice.

effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible. This paragraph shall not apply to common carriers by railroad subject to this part.

NOTE.—Comparable provisions as to investigation and suspension: part II, common carriers, § 216 (g); contract carriers, § 218 (c); part III, common carriers, § 307 (g); contract carriers, § 307 (i); part IV, freight forwarders, § 406 (e).

(8)(a) Whenever a schedule is filed with the Commission by a common carrier by railroad stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may, upon the complaint of an interested party or upon its own initiative, order a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Such hearing shall be completed and a final decision rendered by the Commission not later than 7 months after such rate, fare, charge, classification, regulation, or practice was scheduled to become effective, unless, prior to the expiration of such 7-month period, the Commission reports in writing to the Congress that it is unable to render a decision within such period, together with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the date of the filing of such schedule. If the final decision of the Commission is not made within

the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately at the expiration of such time period, or shall remain in effect if it has already become effective. Such rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if, upon complaint of an interested party, the Commission finds it to be unlawful.

(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to the Congress pursuant to subdivision (a), except under the following conditions:

Schedule
suspension.

(i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part or, following promulgation of standards and procedures under section 1(5)(d) of this part, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate increase applies; or

(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

(c) The limitations upon the Commission's power to suspend rate changes set forth in subdivisions (b) (i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only if—

(i) the rate increase or decrease is filed within 2 years after the date of the enactment of this subdivision;

(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision;

(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision within the first 365 days following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1976; and

(iv) the aggregate of the increases or decreases for any rate filed pursuant to clauses (i) and (ii) of this subdivision within the second 365 day-period following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1977.

(d) The Commission may not suspend a rate under this paragraph unless it appears from specific facts shown by the verified complaint of any person that—

(i) without suspension the proposed rate change will cause substantial injury to the complainant or the party represented by such complainant; and

(ii) it is likely that such complainant will prevail on the merits.

The burden of proof shall be upon the complainant to establish the matters set forth in clauses (i) and (ii) of this subdivision. Nothing in this paragraph shall be construed as establishing a presumption that any rate increase or decrease in excess of the limits set forth in clauses (iii) or (iv) of subdivision (c) is unlawful or should be suspended.

(e) If a hearing is initiated under this paragraph with respect to a proposed increased rate, fare, or charge, and if the schedule is not suspended pending such hearing and the decision thereon, the Commission shall require the railroads involved to keep an account of all amounts received because of such increase from the date such rate, fare, or charge became effective until the Commission issues an order or until 7 months after such date, whichever first occurs, or, if the hearings are extended pursuant to subdivision (a), until an order issues or until 10 months elapse, whichever first occurs. The account shall specify by whom and on whose behalf the amounts are paid. In its final order, the Commission shall require the common carrier by railroad to refund to the person on whose behalf the amounts were paid that portion of such increased rate, fare, or charge found to be not justified, plus interest at a rate which is equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. With respect to any proposed decreased rate, fare, or charge which is suspended, if the decrease or any part thereof is ultimately found to be lawful, the common carrier by railroad may refund any part of the portion of such decreased rate, fare, or charge found justified if such carrier makes such a refund available on an equal basis to all shippers who participated in such rate, fare, or charge according to the relative amounts of traffic shipped at such rate, fare, or charge.

(f) In any hearing under this section, the burden of proof is on the common carrier by railroad to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. The Commission shall specifically consider, in any such hearing, proof that such proposed changed rate, fare, charge,

classification, rule, regulation, or practice will have a significantly adverse effect (in violation of section 2 or 3 of this part) on the competitive posture of shippers or consignees affected thereby. The Commission shall give such hearing and decision preference over all other matters relating to railroads pending before the Commission and shall make its decision at the earliest practicable time.”.

(9) Following promulgation of standards under section 1(5)(d) of this part, whenever a rate of a common carrier by railroad subject to this part is challenged as being unreasonably high, the Commission shall, upon complaint or upon its own initiative and within 90 days after the commencement of a proceeding to investigate the lawfulness of such rate, determine whether the carrier proposing such rate has market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate applies. If the Commission finds that such a carrier does not have such market dominance, such finding shall be determinative in all additional or other proceedings under this Act concerning such rate or service, unless (a) such finding is modified or set aside by the Commission, or (b) such finding is set aside by a court of competent jurisdiction. Nothing in this paragraph shall limit the Commission’s power to suspend a rate pursuant to this section, except that if the Commission has found that a carrier does not have such market dominance over the service to which a rate applies, the Commission may not suspend any increase in such rate on the ground that such rate as increased exceeds a just or reasonable maximum for such service, unless the Commission specifically modifies or sets aside its prior determination concerning market dominance over the service to which such rate applies.”.

90 Stat. 36.

(10) In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this part to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this part provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said

36 Stat. 553.
90 Stat. 35.

Shippers may
designate
routing.

Exceptions
and regula-
tions.

Carrier's duty
to route, bill,
and transport
as directed.

Choice between
competing
lines.

line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

41 Stat. 487.

Accounting,
as between
carriers, for
proceeds of
diverted trans-
portation.

(11) Whenever property is diverted or delivered by one carrier to another carrier contrary to routing instructions in the bill of lading, unless such diversion or delivery is in compliance with a lawful order, rule, or regulation of the Commission, such carriers shall, in a suit or action in any court of competent jurisdiction, be jointly and severally liable to the carrier thus deprived of its right to participate in the haul of the property, for the total amount of the rate or charge it would have received had it participated in the haul of the property. The carrier to which the property is thus diverted shall not be liable in such suit or action if it can show, the burden of proof being upon it, that before carrying the property it had no notice, by bill of lading, waybill or otherwise, of the routing instructions. In any judgment which may be rendered the plaintiff shall be allowed to recover against the defendant a reasonable attorney's fee to be taxed in the case.

Commission
may direct
routing when
shipper does
not.

(12) With respect to traffic not routed by the shipper, the Commission may, whenever the public interest and a fair distribution of the traffic require, direct the route which such traffic shall take after it arrives at the terminus of one carrier or at a junction point with another carrier, and is to be there delivered to another carrier.

Unauthorized
disclosure of
information as
to shipments
unlawful.

36 Stat. 553.

(13) It shall be unlawful for any common carrier subject to the provisions of this part, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided.* That nothing in this part shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court,

When dis-
closure lawful.

or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

NOTE.—Comparable provisions, part II, § 222 (e), (f) ; part III, § 317 (f) ; part IV, § 421 (f).

(14) Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

Penalty.

(15) If the owner of property transported under this part directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this part and shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

Allowance to owner of property for service or instrumentality.

Publication required.

54 Stat. 912.

Commission may fix reasonable maximum allowance.

NOTE.—Comparable provisions, part II, § 225; part III, § 314 part IV, § 415.

(16) The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions on this part.

Enumeration of powers not exclusive.

(17) Within 1 year after the date of enactment of this paragraph, the Commission shall establish, by rule, standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, or peak-period demand for rail services. Such standards and procedures shall be designed to (a) provide sufficient incentive to shippers to reduce peak-period shipments, through rescheduling and advance planning; (b) generate additional revenues for the railroads; and (c) improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by railroads. Following the establish-

90 Stat. 36.

Annual
report to
Congress.

ment of such standards and procedures, the Commission shall prepare and submit to the Congress annual reports on the implementation of such rates, including recommendations with respect to the need, if any, for additional legislation to facilitate the establishment of such demand-sensitive rates.

(18) In order to encourage competition, to promote increased reinvestment by railroads, and to encourage and facilitate increased nonrailroad investment in the production of rail services, a carrier by railroad subject to this part may, upon its own initiative or upon the request of any shipper or receiver of freight, file separate rates for distinct rail services. Within 1 year after the date of enactment of this paragraph, the Commission shall establish, by rule, expeditious procedures for permitting publication of separate rates for distinct rail services in order to (a) encourage the pricing of such services in accordance with the carrier's cash-outlays for such services and the demand therefor, and (b) enable shippers and receivers to evaluate all transportation and related charges and alternatives.

Notice.

90 Stat. 41.

Hearing.

Notice.

(19) Notwithstanding any other provision of law, a common carrier by railroad subject to this part may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of \$1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the schedule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule at any time within 180 days thereafter to become effective after 30 days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section 1, 2, 3, or 4 of this part, except that the Commission may at any time order such schedule to be revised to a level equaling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.

RULE OF RATEMAKING

SEC. 15a. [*February 28, 1920; amended June 16, 1933, September 18, 1940, August 12, 1958, July 10, 1973, February 5, 1976.*] [49 U.S.C. § 15a.] (1) When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

41 Stat. 488.
48 Stat. 220.
54 Stat. 912.
72 Stat. 572.
87 Stat. 166.
90 Stat. 39.
90 Stat. 41.
"Rates" defined.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

Rule of rate making.

48 Stat. 220.
54 Stat. 912.

Needs of public and of carriers considered.

This paragraph shall not apply to common carriers by railroad subject to this part.

NOTE.—Comparable provisions, part II, § 216 (i); part III, § 307 (f); part IV, § 406 (d). Compare also, National Transportation Policy, § 3 (1a) (as to export rates on farm commodities), supra, and Hoch-Smith Resolution, § 55, infra.

90 Stat. 41.

(3) In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act. This paragraph shall not apply to common carriers by railroad subject to this part.

Competition, different modes of transportation.

90 Stat. 41.

(4) With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment

Notice, hearing

90 Stat. 41.

of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate.

(5) The Commission shall, in any proceeding which involves a proposed increase or decrease in railroad rates, specifically consider allegations that such increase or decrease would change the rate relationships between commodities, ports, points, regions, territories or other particular descriptions of traffic (whether or not such relationships were previously considered or approved by the Commission) and allegations that such increase or decrease would have a significantly adverse effect on the competitive position of shippers or consignees served by the railroad proposing such increase or decrease. If the Commission finds that such allegations as to change or effect are substantially supported on the record, it shall take such steps as are necessary, either before or after such proposed increase or decrease becomes effective and either within or outside such proceeding to investigate the lawfulness of such change or effect.

(6)(a) The Commission shall by rule, on or before August 1, 1973, establish requirements for petitions for adjustment of interstate rates of common carriers subject to this part based upon increases in expenses of such carriers resulting from any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Such requirements, established pursuant to section 553 of title 5 of the United States Code (with time for comment limited so as to meet the required date for establishment and subject to future amendment or revocation), shall be designed to facilitate fair and expeditious action on any such petition as required in subparagraph (b) of this paragraph by disclosing such information as the amount needed in rate increases to offset such increases in expenses and the availability of means other than a rate increase by which the carrier might absorb or offset such increases in expenses.

(b) Notwithstanding any other provision of law, the Commission shall, within thirty days of the filing of a verified petition in accordance with rules promulgated under subparagraph (a) of this paragraph, by any car-

90 Stat. 39

Rate increase
petitions.
41 Stat. 488;
72 Stat. 572.
90 Stat. 41.
Ante, p. 162.
26 USC 3201.

Supra.
80 Stat. 383.

Sec. 15a
Interim
rates.

rier or group of carriers subject to this part, permit the establishment of increases in the general level of the interstate rates of said carrier or carriers in an amount approximating that needed to offset increases in expenses theretofore experienced or demonstrably certain to occur commencing on or before the effective date of the increased rates, as a result of any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Such increases in rates may be made effective on not more than thirty nor less than ten days' notice to the public, notwithstanding any outstanding orders of the Commission. To the extent necessary to effectuate their establishment, rates so increased shall be relieved from the provisions of section 4 of this part and may be published in tariff supplements of the kind ordinarily authorized in general increase proceedings.

Public notice requirements.

Final rate determination, hearings.

(c) The Commission shall within sixty days from the date of establishment of interim rates under paragraph (4)(b) of this section commence hearings for the purpose of making the final rate determination. The Commission shall then proceed to make such final rate determination with the carrier having the burden of proof. In making such determination, the Commission may take into account all factors appropriate to ratemaking generally under part I of this Act and shall determine such final rates under the standards and limitations applicable to ratemaking generally under part I of this Act. If the increases in rates finally authorized by the Commission are less than the increases in rates initially made effective, the carrier or carriers shall, subject to such tariff provisions as the Commission shall deem sufficient, make such refunds (in the amount by which the initially increased rate collected exceeds the finally authorized increased rate) as may be ordered by the Commission, plus a reasonable rate of interest as determined by the Commission. Nothing contained in this paragraph shall limit or otherwise affect the authority of the Commission to authorize or to permit to become effective any increase in rates other than the increases herein specified.

87 Stat. 167.
49 USC 1.

(d) (A) The State authority having jurisdiction over petitions for intrastate rate increases by any carrier or group of carriers subject to part I of this Act shall, within 60 days of the filing of a verified petition for such increases based upon increases in expenses of such carriers as a result of any increases in taxes under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973, act upon said petition. Such State authority may grant an interim

Sec. 15a

Intrastate rate increase, State authority.

Ante, p. 162.
25 USC 3201.
Ante, p. 168.

rate increase or a final rate increase. If such State authority grants any interim rate increases, it shall thereafter investigate and determine the reasonableness of such increases and modify them to the extent required by applicable law. To the extent that any such interim increases are reduced as a result of the action of a State authority, the carrier or carriers shall make such refunds (in the amount by which the initially increased rate collected exceeds the finally authorized increased rate) as may be ordered by such State authority, plus a reasonable rate of interest as determined by the State authority.

(B) If a State authority denies in toto such a petition filed with it by such carrier or group of carriers seeking relief regarding such intrastate rate increases or does not act finally on such petition within 60 days from the presentation thereof, the Commission shall, within 30 days of the filing of a verified petition by such carrier or group of carriers relating to such intrastate rates, act upon such petition by applying the ratemaking criteria of subparagraph (4)(c) of this paragraph. If the Commission grants, in whole or in part, such petition by any carrier or group of carriers, the increase authorized shall be considered as an interim rate increase as provided in subparagraph (A) above and shall be subject to final determination by the State authority in accordance with the procedures prescribed for interim intrastate rate increases as provided above, including the ordering of refunds by such State authority.

(C) If a State authority denies in part such a petition filed with it by such carrier or group of carriers, within 60 days from the presentation thereof, the Commission shall, within 30 days of the filing of a verified petition by such carrier or group of carriers relating to the intrastate rates involved, act upon such petition by applying the criteria of section 13(4) of this part.

(D) Nothing in subparagraph (A) or (B) shall be construed to abrogate the authority of the Commission under section 13(4) of this part and in the event a carrier or group of carriers subject to a refund requirement under subparagraph (A) or (B) files a petition under section 13(3), the refund requirement shall be stayed pending final order of the Commission under section 13(4) of this part.

(e) Any increased freight rates authorized shall not exceed a reasonable level by types of traffic, commodities, or commodity groups and shall preserve existing market patterns and relationships and present port relationships by increase limitations within and between the major districts to the extent possible without authorizing unreasonable increases in any district.

ORDERS OF COMMISSION AND ENFORCEMENT THEREOF;
FORFEITURES

SEC. 16. [*Amended March 2, 1889, June 29, 1906, June 18, 1910, February 28, 1920, June 7, 1924, August 9, 1935, September 18, 1940, August 2, 1949, August 26, 1958.*] [49 U. S. C. § 16.] (1) That if, after hearing on a complaint made as provided in section thirteen of this part, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this part for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

24 Stat. 384.
25 Stat. 859.
34 Stat. 590.
36 Stat. 554.
41 Stat. 491.
43 Stat. 633.
49 Stat. 543.
54 Stat. 912.
63 Stat. 486.
72 Stat. 859.

Award of damages by Commission.

NOTE.—Comparable provision under part III, § 308 (d).

(2) If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stages of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

41 Stat. 491.
54 Stat. 912.

Enforcement of order by courts.

Findings of fact of Commission prima facie evidence.

Costs; attorney's fee.

NOTE.—Comparable provision under part III, § 308 (e).

(3) (a) All actions at law by carriers subject to this part for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

Time for actions by carriers.
43 Stat. 633.
49 Stat. 543.
54 Stat. 913.
72 Stat. 859.

NOTE.—Comparable provision, part II, § 204a (1); part III, § 308 (f) (1) (A); part IV, § 406a (1).

43 Stat. 633.

(b) All complaints against carriers subject to this part for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d).

Complaints against carriers for damages.

43 Stat. 633.

For recovery of overcharges.
49 Stat. 543.
54 Stat. 913.
72 Stat. 859.

Extension, if claim presented within limited period.

43 Stat. 633.

Extension, if action begun by carrier, etc.

54 Stat. 913.
72 Stat. 859.

43 Stat. 633.

Actions on shipments to accrue on delivery or tender.

43 Stat. 633.
54 Stat. 913.

Petition for enforcing money payment.
43 Stat. 633.

Meaning of "overcharges."

43 Stat. 633.

Accrued causes of action included.

Action for recovery of overcharges.

54 Stat. 913.

Saving clause, accrued causes of action.

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this part within three years from the time the cause of action accrues, and not after, subject to subdivision (d), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the two-year period of limitation in subdivision (b) or of the three-year period of limitation in subdivision (c) a carrier subject to this part begins action under subdivision (a) for service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(e) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) A complaint for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

NOTE.—Comparable provision, part II, § 204a (5); part III § 308 (f) (4); part IV, § 406a (5).

(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the Commission against carriers subject to this part for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

NOTE.—Section 11(c) of the Transportation Act of 1940, not in terms an amendment of section 16 of the Interstate Commerce Act, provides:

"(c) The amendments made by subsection (a) of this section to paragraph (3) (a) and (c) of section 16 of the Interstate Commerce Act, as amended, shall apply only in the case of causes of action accruing after the date this section takes effect."

Comparable provisions under part II, § 204a; part III, § 308 (f), part IV, § 406a.

(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later.

72 Stat. 859
72 Stat. 860.
Transportation
for United
States.

NOTE.—By section 3 of the amendatory act of Aug. 26, 1958, it is provided that the provisions thereof shall apply only to causes of action which accrue on or after the effective date of the act.

Government to pay full rates, § 322 as enacted, § 66 U. S. C., *infra*.

(4) In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined (as plaintiffs, and all of the carriers parties to such) order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Joint plaintiffs
may sue joint
defendants on
awards of
damages.

Service of process, where
made.

Judgment as to
single party, in
joint suit.

NOTE.—Comparable provision under part III, § 308(g).

(5) Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law. In proceedings before the Commission involving the lawfulness of rates, fares, charges, classifications, or practices, service of notice upon an attorney in fact of a carrier who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier, except where the carrier has designated an agent in the city of Washington, District of Columbia, upon whom service of notices and processes may be made, as provided in section 6 of the Act of June 18, 1910 (U. S. C., 1934 edition, title 49, sec. 50): *Provided,* That in such proceedings service of notice of the suspension of a tariff or schedule upon an attorney in fact of a carrier who has filed said tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier, and service of notice of the suspension of a joint tariff or schedule upon a

Service of
order.

—on Wash-
ington agent.
54 Stat. 913.
—on attorney
in fact.

63 Stat. 486.
Notice, suspen-
sion of tariff,
schedule, upon
attorney
in fact.
Joint tariffs.

carrier which has filed said joint tariff or schedule to which another carrier is a party shall be deemed to be due and sufficient notice upon the several carriers parties thereto. Such service of notice may be made by mail to such attorney in fact or carrier at the address shown in the tariff or schedule.

NOTE.—Comparable provisions, part II, § 221 (a); part III, § 315 (a); part IV, § 416 (a). See also the Mann-Elkins Act, § 6, 49 U. S. C. § 50, *infra*.

Commission
may suspend or
modify order.

(6) The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

NOTE.—Comparable provisions, part III, § 315 (c); part IV, § 416 (b). General power to make orders, under part II, § 204 (a) (6).

Compliance
required.

(7) It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

NOTE.—Comparable provision, part III, § 315 (e); part IV § 416 (d).

41 Stat. 492.

Penalty for
refusal to obey
order made
under sections
3, 13, or 15.
49 Stat. 543.

(8) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of sections 3, 13, or 15 of this part shall forfeit to the United States the sum of \$5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

NOTE.—Comparable penal provisions, part II, § 222 (a); part III, § 317 (a); part IV, § 421 (a).

Recovery of
forfeiture.

(9) The forfeiture provided for in this part shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

District
attorneys to
prosecute;
costs and
expenses.

(10) It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Commission
may employ
attorneys.

(11) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the ex-

penses of such employment shall be paid out of the appropriation for the Commission.

NOTE.—Comparable provisions, as to employment of attorneys, etc., part II § 205 (j) ; part III, § 319.

See also §§ 18 (1), general authority to employ ; 19a, valuation employees ; 20 (10), special agents or examiners.

(12) If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to any district court of the United States of competent jurisdiction for the enforcement of such order. If, after hearing, such court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, such court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

Enforcement of orders other than for payment of money
54 Stat. 913.

Writ of injunction to compel obedience.

NOTE.—Comparable provisions, part II, § 222 (b) ; part III, § 316 (b) ; part IV, § 417 (b).

(13) The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission as required under the provisions of this part shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

Schedules, contracts, and annual reports filed, public records.

—receivable as prima facie evidence.

NOTE.—Provisions of this paragraph, relating to public records, are applicable under part II, § 204 (d) ; comparable provisions part III, § 316 (d) ; part IV, § 417 (d).

COMMISSION PROCEDURE; DELEGATION OF DUTIES; REHEARINGS

SEC. 17. [*As amended March 2, 1889, August 9, 1917, February 28, 1920, February 28, 1933, August 9, 1935, September 18, 1940, September 14, 1961.*] [49 U. S. C. § 7, February 5, 1976.] (1) The Commission is hereby authorized by its order to divide the members thereof into as many divisions (each to consist of not less than three members) as it may deem necessary, which may be changed from time to time. Such divisions shall be desig-

—certified copies of extracts prima facie evidence.
40 Stat. 270.
41 Stat. 493.
47 Stat. 1368.
49 Stat. 543.
54 Stat. 913.
75 Stat. 517.
90 Stat. 47.
Divisions of Commission.

nated, respectively, division one, division two, and so forth, or by a term descriptive of the principal subject, work, business, or function assigned or referred to such divisions. The Commission may designate one or more of its divisions as appellate divisions. Any Commissioner may be assigned to such division or divisions as the Commission may direct, and the senior in service of the Commissioners constituting a division shall act as chairman thereof unless otherwise directed by the Commission. When a vacancy occurs in any division or when a Commissioner because of absence, or other cause, is unable to serve thereon, the Chairman of the Commission or any Commissioner designated by him for that purpose may serve temporarily on such division until the Commission otherwise orders.

NOTE.—All provisions of § 17 applicable under part II § 205 (h) ; part III, § 316 (a) part IV, § 417 (a).

54 Stat. 913.

Reference to
division, Com-
missioner, or
board of em-
ployees.

Order of Com-
mission assign-
ing work.

Functional
assignment
when rates
involved.

Vacancies ; in-
ability to act.

Commission to
determine pro-
cedure.

Seal ; judicial
notice.
Oaths, admin-
istration.

(2) The Commission may by order direct that any of its work, business, or functions under any provision of law (except matters required to be referred to joint boards by section 205, and except functions vested in the Commission under this section), or any matter which shall have been or may be referred to it by Congress or by either branch thereof, be assigned or referred to any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission (hereinafter in this section called a "board") to be designated by such order, for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. The following classes of employees shall be eligible for designation by the Commission to serve on such boards: examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys. The assignment or reference, to divisions, of work, business, or functions relating to the lawfulness of rates, fares, or charges shall be made according to the character of regulation to be exercised and not according to the kind or class of the carriers involved or to the form or mode of transportation in which such carriers may be engaged. When an individual Commissioner, or any employee, is unable to act upon any matter so assigned or referred because of absence or other cause, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

NOTE.—See note to par. (1), supra.

(3) The Commission shall conduct its proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission, the Secretary of the Commission, or

any member of a board may administer oaths and affirmations and any member of the Commission or the Secretary of the Commission (or any member of a board in connection with the performance of any work, business, or functions referred under this section to a board upon which he serves) may sign subpoenas. A majority of the Commission, of a division, or of a board shall constitute a quorum for the transaction of business. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division, individual Commissioner, or board, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division, individual Commissioner, or board and be heard in person or by attorney. Every vote and official act of the Commission, or of any division, individual Commissioner, or board, shall be entered of record, and such record shall be made public upon the request of any party interested. All hearings before the Commission, a division, individual Commissioner, or board shall be public upon the request of any party interested. No Commissioner or employee shall participate in any hearing or proceeding in which he shall have any pecuniary interest.

NOTE.—See note to par. (1), *supra*. Joint-board procedure and rules, under part II, § 205 (a), (b), (d). Authority to prescribe procedure in valuation investigations, § 19a (c). General authority as to rules, regulations, orders, part II, § 204 (a) (6); part III, § 304 (a); part IV, § 403 (a).

Prohibited interest of member of examiner of Commission, or joint-board member in transportation agency, § 205 (i).

(4) A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

NOTE.—See note to par. (1), *supra*.

(5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter

24 Stat. 385.
25 Stat. 861.
40 Stat. 270.
41 Stat. 492.
47 Stat. 1368.
49 Stat. 513.
54 Stat. 914.

Subpoenas.

Quorum.

General rules.

Conformability to Federal practice.

Appearance personally or by attorney.

Record of actions, public on request.
Hearings, public.

Disqualification for interest.

Authority when matter assigned or referred.

—same as Commission.

Secretary : seal.

47 Stat. 1368.
54 Stat. 914

Determination effective as if by Commission.

54 Stat. 915

Matters referred and publicly heard by Commissioner or board.
—report and recommended order.

—exceptions.

—final, without exceptions, unless stayed.

Reconsideration.

Stay of recommended order when exceptions filed.
75 Stat. 517

Employee boards.

54 Stat. 915.

Rehearings, rearguments, reconsiderations.

—applications.

—general rules governing.

Consideration by Commission or appellate division.

When granted.

Limitation by general rule.

so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under part II, persons specified in section 205 (c)), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof. When deemed by the Commission to be appropriate for the efficient and orderly conduct of its business, it may authorize duly designated employee boards to perform, under this paragraph, functions of the same character as those which may be performed thereunder by duly designated divisions.

NOTE.—See note to par. (1), *supra*. As to recommended orders by an examiner, § 17 (10) ; by a joint board, § 205 (a).

(6) After a decision, order, or requirement shall have been made by the Commission, a division, an individual Commissioner, or a board, or after an order recommended by an individual Commissioner or a board shall have become the order of the Commission as provided in paragraph (5), any party thereto may at any time, subject to such limitations as may be established by the Commission as hereinafter authorized, make application for rehearing, reargument, or reconsideration of the same, or of any matter determined therein. Such applications shall be governed by such general rules as the Commission may establish. Any such application, if the decision, order, or requirement was made by the Commission, shall be considered and acted upon by the Commission. If the decision, order, or requirement was made by a division, an individual Commissioner, or a board such application shall be considered and acted upon by the Commission or referred to an appropriate appellate division for consideration and action. Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor be made to appear; but the Commission may, from time to time, make or amend general rules or orders establishing limitations upon the right to apply for rehearing, reargument, or reconsideration of a decision, order, or requirement of the Commission or of a division so as to confine

such right to proceedings, or classes of proceedings, involving issues of general transportation importance. Notwithstanding the foregoing provisions of this paragraph, any application for rehearing, reargument, or reconsideration of the matter assigned or referred to an individual Commissioner or a board, under the provisions of paragraph (2), if such application shall have been filed within twenty days after the recommended order in the proceeding shall have become the order of the Commission as provided in paragraph (5), and if such matter shall not have been reconsidered or reheard as provided in such paragraph, shall be referred to an appropriate appellate division of the Commission and such division shall reconsider the matter either upon the same record or after a further hearing.

Rehearings of decisions in matters assigned to Commissioner of board.

NOTE.—See note to par. (1), *supra*.

(7) If after rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission or appellate division may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original determination shall be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original order.

54 Stat. 915.

Modification of original determination.

Subsequent determinations subject to rehearing.

NOTE.—See note to par. (1), *supra*.

(8) Where application for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed pending disposition of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision, order, or requirement, or operate to stay or postpone the enforcement thereof, without the special order of the Commission.

54 Stat. 916.

Stay of order pending disposition of application.

Compliance with order not otherwise excused.

NOTE.—See note to par. (1), *supra*.

(9) (a) Whenever the term 'hearing' is used in this part, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

"Hearing."
90 Stat. 48.

(b) With respect to any matter involving a common carrier by railroad subject to this part, whenever the Commission assigns the initial disposition to any of such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 12 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

(A) specific findings of fact;

(B) specific and separate conclusions of law;

(C) a recommended order; and

(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

Review.

(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be considered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, United States Code, and such rules (limiting and defining the issues and pleadings upon re-

view) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 120 days after the date on which it grants the application for reconsideration.

(e) The Commission may, in its discretion, extend any time period set forth in this paragraph for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

Report to
Congress.

(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

(i) not less than 7 of the Commissioners, by public vote, agree to such further extension; and

(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

(A) a full explanation of the reasons for such further extension;

(B) the anticipated duration of such further extension;

(C) the issues involved in the matter before the Commission; and

(D) the names of personnel of the Commission working on such matter.

Rules.

(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

(i) reopen any proceeding;

(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

(iii) reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this part, except that the provisions of other sections of this part pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the provisions pertaining to deadlines contained in this paragraph.

(j) Reports in writing and other written statement (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official

designation of the individual or group taking such action (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law.

Written statement, availability to public.

49 USC 17.

(10) When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of a division, an individual Commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of, by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise.

54 Stat. 916.

Suits to vacate order of division. Commissioner, or board.

NOTE.—See note to par. (1). Judicial review. see Judicial Code and Judiciary, 28 U.S.C., *infra*; part II, see also § 205(g).

(11) Any matter arising in the administration of part II of this Act as to which a hearing is to be held may be referred to an examiner of the Commission, for action thereon, subject to the conditions and limitations provided in this section in the case of reference of work, business or functions, as to which a hearing is to be held, to an individual Commissioner or board.

54 Stat. 916.

Reference to examiner, under part II.

NOTE.—See note to par. (1), *supra*.

(12) Representatives of employees of a carrier, duly designated as such, may intervene and be heard in any proceeding arising under this Act affecting such employees.

54 Stat. 916.

Intervention by employees' representatives.

NOTE.—See note to par. (1), *supra*. Protection of railroad employees under consolidation, merger, and like transactions, § 5 (2) (f).

(13) The Commission is authorized to promulgate reasonable rules and regulations relating to admission to practice before it, and is authorized to impose a reasonable fee for such admission, and such fees shall

54 Stat. 916.

Admission to practice.

—rules: fee.

be covered into the Treasury of the United States as miscellaneous receipts.

NOTE.—See note to par. (1), *supra*.

Public Law 89-332, Nov. 8, 1965, 79 Stat. 1281, provides that any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before any agency, as "agency" is defined in § 2 (a) of the Administrative Procedure Act, upon filing with the agency a written declaration that he is currently so qualified and is authorized to represent the party on whose behalf he acts; but that the statute may not be construed to (1) grant or deny the right to represent others to any person not so qualified, (2) authorize or limit discipline of any person appearing in a representative capacity before any agency, (3) authorize a former officer or employee of an agency to represent others where such representation is prohibited by law or regulation, or (4) prevent an agency from requiring a power of attorney as a condition to settlement of a controversy involving payment of money.

90 Stat. 50.

(14)(a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission after the date of enactment of this subdivision shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

(b) Within 1 year after the date of enactment of this subdivision, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding.

90 Stat. 47.

(15) Whenever the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce of the Senate makes a written request for documents which are in the possession or under the control of the Commission and which relate to any matter involving a common carrier by railroad subject to this part, the Commission shall, within 10 days after the date of receipt of such request, submit such documents (or copies thereof) to such committee, or submit a report in writing to such committee stating the reason why such documents have not been so submitted, and the anticipated date on which they will be submitted. If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition such transfer on the guaranteed return by the transferee of such document to the Commission for purposes of complying with the preceding sentence. This paragraph shall not apply to documents which have been obtained by the Commission from persons subject to regulation by the Commission, and which contain trade secrets or commercial or financial

information of a privileged or confidential nature. This paragraph shall not be deemed to restrict any other authority of either House of Congress, or any committee or subcommittee thereof, to obtain documents. For purposes of this paragraph, the term "document" means any book, paper, correspondence, memorandum, or other record, or any copy thereof.

"Document."

**EMPLOYEES; APPOINTMENT AND COMPENSATION; WITNESS
FEES; EXPENSES**

SEC. 18. [*As amended March 2, 1889, August 9, 1917, February 28, 1920.*] [49 U.S.C. § 18.] (1) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

24 Stat. 386.
25 Stat. 861.
40 Stat. 271.
41 Stat. 493.

Salary of Commissioners.

Secretary;
salary.

Employees;
compensation.

Witnesses' fees.

NOTE.—See § 24, increasing number of Commissioners, § 20(10), employment of special agents or examiners.

Effective Dec. 16, 1967, compensation of members of the Commission is determined under Chapter 11, Title 2, USC, through the Commission on Executive, Legislative, and Judicial Salaries. Upon recommendation of the President of the United States, the annual rate of basic compensation of the Commissioners after Feb. 14, 1969, is \$38,000, and that of the Chairman of the Commission is \$40,000. See note following section 358 of Title 2, USC.

Comparable provisions as to employment of experts, attorneys, etc., part II, § 205(j); part III, § 319.

(2) All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Expenses of
Commission,
auditing and
payment.

NOTE.—Expenses of the Interstate Commerce Commission audited by the General Accounting Office, § 57, *infra*.

OFFICE AND SESSIONS

SEC. 19. [*As amended August 9, 1935.*] [49 U.S.C. § 19.] That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public

24 Stat. 386.

49 Stat. 543.

Principal office,
Washington.

Special sessions.

Prosecution of inquiries anywhere in the United States.

or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this part.

NOTE.—Comparable provision, part II, as to sessions of Commission, § 205(c).

VALUATION OF PROPERTY OF CARRIERS

37 Stat. 701.
41 Stat. 493.
42 Stat. 624.
48 Stat. 221.
49 Stat. 543.
74 Stat. 200.

Valuation of common-carrier property.

Electric railways, exception.

Investigation by Commission.
Employment of experts.

Sec. 19a

Inventory of property.

Classification of property.

Costs of common-carrier property to be reported.

42 Stat. 624.

Analysis of methods.

Other values and elements of value.

SEC. 19a. [*March 1, 1913, amended February 28, 1920, June 7, 1922, June 16, 1933, August 9, 1935, June 11, 1960.*] [49 U. S. C. § 19a.] (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, except any street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this part whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier subject to the provisions of this part in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for

any differences between any such value and each of the foregoing cost values.

NOTE.—Goodwill, earning power, and operating certificates excluded as elements of value, part II, § 216 (h) ; part III, § 307 (c) ; part IV, § 406 (c).

Determination and certification of value in railroad reorganization proceedings, Bankruptcy Act, §77 (e), 11 U. S. C. § 205 (e), *infra*.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

Original cost and present value of real property.
42 Stat. 624.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Property not held for carrier purposes.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Corporate history and organization.

Stocks and bonds; financing.

Earnings and expenditures.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county, or municipal government in consideration of such aid, gift, grant, or donation.

Aids, gifts, grants, and donations.

Proceeds of land grants, and value of unsold portion

Concessions made by carrier.

Commission may prescribe procedure, form of results, and classification.

Value stated separately by States.

Prosecution and report of investigation.

Carriers to furnish documents.

Access to property and records.

Carriers to cooperate with Commission.

Regulations have effect of law.

Public inspection of records.

Commission to keep informed of changes.
48 Stat. 221.

Revisions authorized
Sec. 19a

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this part and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this part shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this part shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Upon completion of the original valuations herein provided for, the Commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all common carriers as to which original valuations have been made, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of railroad properties, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications, and values of the properties; and when deemed necessary,

may revise, correct, and supplement any of its inventories and valuations.

(g) To enable the Commission to carry out the provisions of the preceding paragraph, every common carrier subject to the provisions of this part shall make such reports and furnish such information as the Commission may require.

Information required for changes and corrections.
48 Stat. 221.

(h) Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the Commission shall give notice by registered mail or by certified mail to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

Notice of tentative valuation.
74 Stat. 200.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this part the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

Finality if no protest filed.

Hearings of protests.

Changes in tentative valuations.

Order making tentative valuation final.
Final valuations and classifications prima facie evidence.

NOTE.—Determination and certification of value in proceedings for railroad reorganization, Bankruptcy Act, § 77 (e), 11 U. S. C. § 205 (e), *infra*.

(j) If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to ren-

Transmission
of new evi-
dence to
Commission.

Action of Com-
mission
thereon.

Modification
of order.

Judgment on
original order.

Applicable to
receivers and
operating
trustees.
Penalty.

Jurisdiction of
district courts
to compel com-
pliance.
Secs. 19a-20

38 Stat. 627.

Transportation
of Commis-
sion's valua-
tion forces
and supplies.

Special service.

der judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value and shall report its action thereon to said court within the time fixed by the court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section sixteen of the Act to regulate commerce.

(l) That the district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

NOTE.—Writs of mandamus, see note to § 23.

The following provision is contained in Sundry Civil Appropriation Act, approved August 1, 1914 [49 U.S.C. § 52] :

It shall be the duty of every common carrier by railroad whose property is being valued under the Act of March first, nineteen hundred and thirteen, to transport the engineers, field parties, and other employees of the United States who are actually engaged in making surveys and other examination of the physical property of said carrier necessary to execute said Act from point to point on said railroad as may be reasonably required by them in the actual discharge of their duties; and, also, to move from point to point and store at such points as may be reasonably required the cars of the United States which are being used to house and maintain said employees; and, also, to carry the supplies necessary to maintain said employees and the other property of the United States actually used on said railroad in said work of valuation. The service above required shall be regarded as a special service and shall be rendered under such forms and regulations and for such reasonable compensation as may be prescribed by the Interstate Commerce Commission and as will in-

sure an accurate record and account of the service rendered by the railroad, and such evidence of transportation, bills of lading, and so forth, shall be furnished to the Commission as may from time to time be required by the Commission.

Accounting.

REPORTS, RECORDS, AND ACCOUNTS OF CARRIERS; MANDAMUS;
LIABILITY OF INITIAL CARRIER FOR LOSS, ETC.

SEC. 20. [*As amended June 29, 1906, February 25, 1909, June 18, 1910, March 4, 1915, August 9, 1916, February 28, 1920, July 3, 1926, March 4, 1927, April 23, 1930, August 9, 1935, September 18, 1940, June 3, 1948, August 2, 1949, February 5, 1976.*] [49 U.S.C. § 20.]

(1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers, lessors, and associations (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers, lessors, and associations as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier, lessor, or association in such form and detail as may be prescribed by the Commission.

NOTE.—Comparable provisions, as to requirements of reports and prescription of forms, part II, § 220 (a); part III, § 313 (a); part IV, § 412 (a). Section 801, 46 U. S. C. § 1211, Merchant Marine Act of 1936 is made inapplicable to books, records, accounts, required to be kept in some other form by the Interstate Commerce Commission; requirements, Securities Act of 1933, (§ 19) not to be inconsistent with those of the Interstate Commerce Commission under § 20, 15 U. S. C. § 77s. Duplicate copies to Securities and Exchange Commission, copies of reports to Commission, 15 U. S. C. § 78m (b).

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) hereof, shall also be under oath whenever the Commission so requires.

NOTE.—Comparable provisions, part II, § 220 (b); part III, § 313 (a); part IV, § 412 (b).

(3) (a) The Commission shall, not later than June 30, 1977, issue regulations and procedures prescribing a uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this part. Such regulations and procedures shall become effective

63 Stat. 486.
24 Stat. 386.
34 Stat. 593.
41 Stat. 493.
46 Stat. 251.
49 Stat. 513.
54 Stat. 916.
62 Stat. 295.
63 Stat. 486.
90 Stat. 55.

Reports by carriers, lessors, associations.

Answers, specific, full, true, correct.

Sec. 20

36 Stat. 555.
54 Stat. 916.

Period covered.

When filed.

Verification.

Regulations.

90 Stat. 55.

not later than January 1, 1978. Before promulgating such regulations and procedures, the Commission shall consult with and solicit the views of other agencies and departments of the Federal Government, representatives of carriers, shippers, and their employees, and the general public.

(b) In order to assure that the most accurate cost and revenue data can be obtained with respect to light density lines, main line operations, factors relevant in establishing fair and reasonable rates, and other regulatory areas of responsibility, the Commission shall identify and define the following items as they pertain to each facet of rail operations:

- (i) operating and nonoperating revenue accounts;
- (ii) direct cost accounts for determining fixed and variable cost for materials, labor, and overhead components of operating expenses and the assignment of such costs to various functions, services, or activities, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services), and general and administrative expenses; and
- (iii) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of such costs to various functions, services, or activities.

(c) The accounting system established pursuant to this paragraph shall be in accordance with generally accepted accounting principles uniformly applied to all common carriers by railroad subject to this part, and all reports shall include any disclosure considered appropriate under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. The Commission shall, notwithstanding any other provision of this section, to the extent possible, devise the system of accounts to be cost effective, nonduplicative, and compatible with the present and desired managerial and responsibility accounting requirements of the carriers, and to give due consideration to appropriate economic principles. The Commission should attempt, to the extent possible, to require that such data be reported or otherwise disclosed only for essential regulatory purposes, including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

Review.

(d) In order that the accounting system established pursuant to this paragraph continue to conform to generally accepted accounting principles, compatible with the managerial responsibility accounting requirements of carriers, and in compliance with other objectives set forth in this section, the Commission shall periodically,

but not less than once every 5 years, review such accounting system and revise it as necessary.

(e) There are authorized to be appropriated to the Commission for purposes of carrying out the provisions of this paragraph such sums as may be necessary, not to exceed \$1,000,000, to be available for—

Appropriation
authorization.

(i) procuring temporary and intermittent services as authorized by section 3109 (b) of title 5, United States Code, but at rates for individuals not to exceed \$250 per day plus expenses; and

(ii) entering into contracts or cooperative agreements with any public agency or instrumentality or with any person, firm, association, corporation, or institution, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

NOTE.—Comparable provisions, part II, § 204 (a) (1), (2); part III, § 313 (c); part IV, § 412 (a).

(4) The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this paragraph, carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

41 Stat. 493.

54 Stat. 917.
Sec. 20.

Depreciation
charges.
—classes of
property.

—rates of de-
preciation.
—modification.

Prescribed
charges and
rates manda-
tory and
exclusive.

NOTE.—Comparable provisions, part II, § 220 (c); part III, § 313 (d).

(5) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers and their lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys, and it shall be unlawful for such carriers or lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission or any duly authorized special agent, accountant, or examiner thereof shall at all times have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of

34 Stat. 593.
54 Stat. 917.
63 Stat. 486.
Accounts, rec-
ords, memo-
randa. Forms
prescribed; to
be observed.

Access to rec-
ords: copies.

—carriers, lessors, associations.
—controlling or controlled person.

—to lands, buildings, and equipment.

Carriers, lessors, etc., to submit records and property to inspection.

such carriers, lessors, and associations, and such accounts, books, records, memoranda, correspondence, and other documents, of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to all lands, buildings, or equipment of such carriers or lessors, and shall have authority under its order to inspect and examine any and all such lands, buildings, and equipment. Such carriers, lessors, and other persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this paragraph, and such carriers and lessors shall submit their lands, buildings, and equipment to inspection and examination, to any duly authorized special agent, accountant, or examiner of the Commission, upon demand and the display of proper credentials.

NOTE.—“Control” construed for purposes of this section, § 1 (3) (b).

Comparable provisions, part II, § 220(d); part III § 313(e), (f); part IV § 412 (c), (d).

54 Stat. 917.

Access by Commission to records. Protective or car service.

(6) The Commission or any duly authorized special agent, accountant, or examiner thereof shall at all times have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of persons which furnish cars or protective service against heat or cold to or on behalf of any carrier by railroad or express company subject to this part: *Provided, however,* That such authority shall be limited to accounts, books, records, memoranda, correspondence, or other documents which pertain or relate to the cars or protective service so furnished. The Commission shall further have authority, in its discretion, to prescribe the forms of any or all accounts, records, and memoranda which it is authorized by this paragraph to inspect and copy, and to require the persons furnishing such cars or protective service, as aforesaid, to submit such reports and specific and full, true, and correct answers to such questions, relative to such cars or service, as the Commission may deem necessary. Persons furnishing such cars or protective service shall submit their accounts, books, records, memoranda, correspondence, or other documents, to the extent above provided, for inspection or copying to any duly authorized special agent, accountant, or examiner of the Commission upon demand and the display of proper credentials.

Form of accounts, etc., prescribed.

Reports required.

Submission of records to Commission or its agents.

54 Stat. 918. Failure to keep or submit prescribed records, penalty.

(7) (a) In case of failure or refusal on the part of any carrier, lessor, or other person to keep any accounts, records, and memoranda in the form and manner

prescribed, under authority of this section. by the Commission, or to submit any accounts, books, records, memoranda, correspondence, or other documents to the Commission or any of its authorized agents, accountants, or examiners for inspection or copying, as required under this section, such carrier, lessor, or person shall forfeit to the United States not to exceed \$500 for each such offense and for each day during which such failure or refusal continues.

NOTE.—Comparable penal provisions, part III, § 222 (g), (h); part III, § 317 (d); part IV, § 421 (d).

(b) Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of such carriers, lessors, or other persons as may, after a reasonable time, be destroyed, and prescribing the length of time the same shall be preserved.

(c) Any carrier or lessor, or person furnishing cars or protective service, or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

Sec. 20

54 Stat. 918.
False entry.

Destruction or
spoliation.

Failure to
make entries.

Keeping ac-
counts con-
trary to rules

False report or
document filed.

—penalty.

35 Stat. 649.

Destruction of
records, rules
authorizing.

54 Stat. 918.
Car or protec-
tive service.

—failure to re-
port truly.

—penalty.

34 Stat. 593.
54 Stat. 918.
Refusal of ac-
cess to Com-
mission or
agents.

—penalty.

34 Stat. 593.
54 Stat. 919
Forfeitures.
Recovery.

34 Stat. 593.
54 Stat. 919.
Divulging in-
formation un-
lawfully.

—exception.
—penalty.

54 Stat. 919.
Definitions :
"keep," "kept,"
"carrier,"
"lessor."

63 Stat. 48.
"Association"
defined.

United States
courts may is-
sue mandamus
to compel com-
pliance with
acts.

(d) In case of failure or refusal on the part of any carrier or lessor to accord to the Commission or its duly authorized special agents, accountants, or examiners, access to, and opportunity for the inspection and examination of, any lands, buildings, or equipment of said carrier or lessor, as provided in this section, such carrier or lessor shall forfeit to the United States the sum of one hundred dollars for each day during which such failure or refusal continues.

(e) All forfeitures authorized in this paragraph (7) shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this part.

(f) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this section, except insofar as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$500 or imprisonment for not exceeding six months, or both.

NOTE.—Comparable provisions, part II, § 222 (d); part III, § 317 (e); part IV, § 421 (e).

(8) As used in this section, the words "keep" and "kept" shall be construed to mean made, prepared, or compiled, as well as retained; the term "carrier" means a common carrier subject to this part, and includes a receiver or trustee of such carrier; the term "lessor" means a person owning a railroad, a water line, or a pipe line, leased to and operated by a common carrier subject to this part, and includes a receiver or trustee of such lessor, and the term "association" means an association or organization maintained by or in the interest of any group of carriers subject to this part which performs any service, or engages in any activities, in connection with any traffic, transportation, or facilities subject to this Act.

NOTE.—Comparable provisions, part II, § 220 (e); part III, §§ 313 (h), 317 (d); part IV, §§ 412 (f), 421 (d).

(9) That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common

carrier to comply with the provisions of said Acts, or any of them.

NOTE.—Writs of mandamus, see note to § 23.

Comparable provisions, violations of § 5, § 5 (8); part II, § 222 (b); part III, § 316 (b); part IV, as to prohibited relations with freight forwarder, § 411 (e); enforcement of part IV generally, § 417 (b); Judicial Code, 28 U. S. C. § 2284, § 2321.

Circuit courts abolished, see notes to § 9.

(10) And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

Commission may employ special examiners to receive evidence.

NOTE.—Comparable provisions, employees authorized compensation, § 18 (1); part II, § 205 (d), (j); part III, § 319.

(11) That any common carrier, railroad, or transportation company subject to the provisions of this part receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United State to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within

34 Stat. 595.
33 Stat. 1197.
39 Stat. 441.
44 Stat. 1450.
46 Stat. 251.
49 Stat. 543.
54 Stat. 919.
Cummins amendment, as amended.
Receiving carrier to issue bill of lading.
Liability for loss.

Not exempted by any contract or other limitation.

44 Stat. 1448.

Delivering carrier also liable.
Liability for full actual loss.

Limitations of liability or amount of recovery void.

Liability for loss while property in custody of water carrier

54 Stat. 919.

39 Stat. 441.

Baggage.

When inapplicable to property other than ordinary livestock.

Rates dependent upon declared value, authorized or required.

Effect of declaration or agreement as to value.

49 Stat. 543.

Schedules to refer to order.

Ordinary livestock defined.

Rights under existing law preserved.

Venue.

the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this part to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the deliver-

ing carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsignified or diverted in accordance with the applicable tariffs filed as in this part provided.

Time for filing claims and instituting suits.

44 Stat. 1448.

Delivering carrier defined.

44 Stat. 835.

Liability in event of reconsignment.

49 Stat. 543.

NOTE.—Provisions of pars. (11) and (12) applicable under part II, § 219; applicability to freight forwarders, part IV, § 413.

(12) That the common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

44 Stat. 1450.
62 Stat. 295.

Recourse of initial or delivering carrier upon other carriers.

Recovery, expense, defending action.

NOTE.—See note to preceding paragraph.

SECURITIES OF CARRIERS; ISSUANCE, ETC.

SEC. 20a. [February 28, 1920, amended August 9, 1935, August 2, 1949, July 24, 1965.] [49 U. S. C. § 20a.] (1) That as used in this section, the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this part, or any corporation organized for the purpose of engaging in transportation

41 Stat. 494.
49 Stat. 543.
79 Stat. 263.
Regulation of security issues by railroads.

Carriers subject to section.

63 Stat. 487.

by railroad subject to this part, or a sleeping-car company which is subject to this part.

NOTE.—Securities Act of 1933, see § 214; note to § 20 (1); submission of information concerning securities, see 15 U.S.C. § 77y.

Section 13 of the Emergency Rail Facilities Restoration Act, Pub. Law 92-591, Oct. 27, 1972, 86 Stat. 1304, provides that a railroad qualifying for a loan or loans under that act "shall not be required to comply with the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a) with respect to such loan or loans."

Issuance of unauthorized securities prohibited.

"Securities" defined.

Unauthorized assumption of liability prohibited.

Finding prerequisite to authorization.

Lawfulness and compatibility.

Reasonable necessity and appropriateness.
79 Stat. 263.

Exceptions, Federal, State, Municipal, D.C. securities.

(2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose: *Provided*, That nothing in this section is to be construed as applying to securities issued or obligations or liabilities assumed by the United States or any instrumentality thereof, or by the District of Columbia or any instrumentality thereof, or by any State of the United States, or by any political subdivision or municipal corporation of any State, or by any instrumentality of one or more States, political subdivisions thereof, or municipal corporations.

NOTE.—Provisions of pars. (2) to (11) inclusive, § 20a, applicable to common and contract carriers, part II, § 214.

Applicability of provisions for authorization of securities to railroad reorganization proceedings, Bankruptcy Act, § 77 (c) (3), (f), (h), 11 U.S.C. § 205, *infra*; to voluntary adjustments provisions, § 20b (1), (2), (7), (8), (11).

By Public Law 757, 70 Stat. 602, July 24, 1956, granting franchise to the District of Columbia Transit System, it is provided by § 13 (b) (1) that issuance or creation of any securities provided for in subsection (a) shall not be subject to the provisions of section 20a of the Interstate Commerce Act.

(3) The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the foregoing paragraph (2).

Application granted in whole or part or on terms.

Supplemental orders.

(4) Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

Form and contents of application ; verification

(5) Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

Notification as to disposition of securities pledged or held in treasury.

(6) Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which the applicant carrier operates. The railroad commissions, public service or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their people and the States, respectively, involved in such proceeding. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

Notice of application for authority.

State authorities to be heard.

Hearings upon application.

(7) The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

Commission's jurisdiction plenary.

No governmental guaranty or obligation implied.

(8) Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

Short term notes, authorization unnecessary for limited issue.

(9) The foregoing provisions of this section shall not apply to notes to be issued by the carrier maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities: *Provided*, That in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

Notification as to issuance of short-term notes.

Section applies in case of funding.

Reports as to disposition of securities and application of proceeds.

(10) The Commission shall require periodical or special reports from each carrier hereafter issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

Security, obligation, or liability, void if unauthorized—

—or if contrary to order of authorization—

(11) Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other

—not void for procedural omission preceding authorization.

Joint and several liability to innocent holder of void security.

agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

Rescission by holder of void security.

Penalty.

NOTE.—Provisions of pars. (2) to (11), inclusive, applicability under part II, § 214.

(12) After December 31, 1921, it shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. After this section takes effect it shall be unlawful for any officer or director or any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

Holding position as officer or director of more than one carrier prohibited, except on Commission's authorization. Personal benefit to officer or director prohibited in disposition of securities.

Payment of dividends from capital account prohibited.

Penalty.

NOTE.—Beneficial interest by officer, etc., of common carrier in freight forwarder, prohibited, part IV, § 411 (e).

By § 13 (e) of the Act of July 24, 1956, Public Law 757, granting franchise to the District of Columbia Transit System, it is provided: Notwithstanding section 20a (12) of the Interstate Commerce Act, authorization or approval of the Interstate Commerce Commission shall not be required in order to permit a person who is an officer or director of the Corporation to be also an officer or director, or both, of any common carrier controlled by the Corporation which is engaged in mass transportation of passengers for hire in the Washington Metropolitan Area.

MODIFICATION OF RAILROAD FINANCIAL STRUCTURES

62 Stat. 162.
71 Stat. 369,
370.

Congressional
declaration of
purpose.

Preamble.

Voluntary
financial
adjustments.

SEC. 20b. [April 9, 1948, August 16, 1957.] [49 U. S. C. § 20b.] That it is hereby declared to be in aid of the national transportation policy of the Congress, as set forth in the preamble of the Interstate Commerce Act, as amended, in order to promote the public interest in avoiding the deterioration of service and the interruption of employment which inevitably attend the threat of financial difficulties and which follow upon financial collapse and in order to promote the public interest in increased stability of values of railroad securities with resulting greater confidence therein of investors, to assure, insofar as possible, continuity of sound financial condition of common carriers subject to part I of said Act, to enhance the marketability of railroad securities impaired by large and continuing accumulations of interest on income bonds and dividends on preferred stock and to enable said common carriers, insofar as possible, to avoid prospective financial difficulties, inability to meet debts as they mature, and insolvency. To assist in accomplishing these ends and because certain classes of the securities of such carriers are in the usual case held by a very large number of holders, and, further, to enable modification and reformation of provisions of the aforesaid classes of securities and of provisions of the instruments pursuant to which they are issued or by which they are secured in cases where such modification and reformation shall have become necessary or desirable in the public interest in order to avoid obstruction to or interference with the economical, efficient, and orderly conduct by such carriers of their affairs, it is deemed necessary to provide means, in the manner and with the safeguards herein provided, for the alteration and modification, without the assent of every holder thereof, of the provisions of such classes of securities and of the instruments pursuant to which they are outstanding or by which they are secured.

Alteration
modification,
of securities.

—or provision
of mortgage,
deed of trust,
corporate char-
ter, etc.

SEC. 20b. (1) It shall be lawful (any express provision contained in any mortgage, indenture, deed of trust, corporate charter, stock certificate, or other instrument or any provision of State law to the contrary notwithstanding), with the approval and authorization of the Commission, as provided in paragraph (2) hereof, for a carrier as defined in section 20a (1) of this part to alter or modify (a) any provision of any class or classes of its securities as defined in section 20a (2) of this part being hereinafter in this section sometimes called "securities"; or (b) any provision of any mortgage, indenture, deed of trust, corporate charter, or other instrument pursuant to which any class of its securities shall have been issued or by which any class of its obligations is secured (hereinafter referred to as instruments) : *Provided*, That

the provisions of this section shall not apply to any equipment-trust certificates in respect of which a carrier is obligated, or to any evidences of indebtedness of a carrier the payment of which is secured in any manner solely by equipment, or to any instrument, whether an agreement, lease, conditional-sale agreement, or otherwise, pursuant to which such equipment-trust certificates or such evidences of indebtedness shall have been issued or by which they are secured.

Equipment-trusts accepted.

(2) Whenever an alteration or modification is proposed under paragraph (1) hereof, the carrier seeking authority therefor shall, pursuant to such rules and regulations as the Commission shall prescribe, present an application to the Commission. Upon presentation of any such application, the Commission may, in its discretion, but need not, as a condition precedent to further consideration, require the applicant to secure assurances of assent to such alteration or modification by holders of such percentage of the aggregate principal amount or number of shares outstanding of the securities affected by such alteration or modification as the Commission shall in its discretion determine. If the Commission shall not require the applicant to secure any such assurances, or when such assurances, as the Commission may require shall have been secured, the Commission shall set such application for public hearing and the carrier shall give reasonable notice of such hearing in such manner, by mail, advertisement, or otherwise, as the Commission may find practicable and may direct, to holders of such of its classes of securities and to such other persons in interest as the Commission shall determine to be appropriate and shall direct. If the Commission, after hearing, in addition to making (in any case where such alteration or modification involves an issuance of securities) the findings required by paragraph (2) of section 20a, not inconsistent with paragraph (1) of this section shall find that, subject to such terms and conditions and with such amendments as it shall determine to be just and reasonable, the proposed alteration or modification—

Application to Commission.
Assurances of assent.

Hearing.

Notice.

- (a) is within the scope of paragraph (1);
- (b) will be in the public interest;
- (c) will be in the best interest of the carrier, of each class of its stockholders, and of the holders of each class of its obligations affected by such modification or alteration; and
- (d) will not be adverse to the interests of any creditor of the carrier not affected by such modification or alteration,

Findings.

then (unless the applicant, carrier shall withdraw its application) the Commission shall cause the carrier, in

Submission to holders of each class of securities.

71 Stat. 369.

Rules, regulations, solicitation of assents, etc.

Assents, submission, certification.

71 Stat. 370.

Order, approving, authorizing; terms and conditions.

62 Stat. 163.

Binding upon holders.

such manner as it shall direct, to submit the proposed alteration or modification (with such terms, conditions, and amendments, if any) to the holders of each class of its securities affected thereby, for acceptance or rejection. The Commission shall have the power to make such general rules and regulations and such special requirements in any particular case in respect to the solicitation of assents, opposition, assurances of assent, acceptance, approval, or disapproval of such holders (whether such solicitation is made before or after approval of the proposed alteration or modification by the Commission), as it shall deem necessary or desirable; and no solicitation shall be made, and no letter, circular, advertisement, or other communication, or financial or statistical statement, or summary thereof, shall be used in any such solicitation, in contravention of such rules, regulations, or special requirements. The Commission may direct that the assents (and any revocations thereof) of such holders to the proposed alteration or modification shall be addressed to a bank or trust company, approved by it, which is incorporated under the laws of the United States or any State thereof, and which has a capital and surplus of at least \$2,000,000, and is a member of the Federal Reserve System. Any bank or trust company so approved shall certify to the Commission the result of such submission and the Commission may, in its discretion, rely upon such certification as conclusive evidence in determining the result of such submission. If the Commission shall find that as a result of such submission the proposed alteration or modification has been assented to by the holders of at least 75 per centum of the aggregate principal amount or number of shares outstanding of each class of securities affected thereby (or as to any class (i) where 75 per centum thereof is held by fewer than twenty-five holders, or (ii) which is entitled to vote for the election of directors of the carrier and the assents of the holders of 25 per centum or more thereof are determined by the Commission to be within the control of the carrier or of any person or persons controlling the carrier, such larger percentage, if any, as the Commission may determine to be just and reasonable and in the public interest), the Commission shall enter an order approving and authorizing the proposed alteration or modification upon the terms and conditions and with the amendments, if any, so determined to be just and reasonable. Such order shall make provision as to the time when such alteration or modification shall become and be binding, which may be upon publication of a declaration to that effect by the carrier, or otherwise, as the Commission may determine. Any alteration or modification which shall become and be binding pursuant to the approval and authority of the Commission hereunder shall be binding upon each holder of any security of the

carrier of each class affected by such alteration or modification, and upon any trustee or other party to any instrument under which any class of obligations shall have been issued or by which it is secured, and when any alteration or modification shall become and be binding the rights of each such holder and of any such trustee or other party shall be correspondingly altered or modified.

Classes of securities affected.

(3) For the purposes of this section a class of securities shall be deemed to be affected by any modification or alteration proposed only (a) if a modification or alteration is proposed as to any provision of such class of securities, or (b) if any modification or alteration is proposed as to any provision of any instrument pursuant to which such class of securities shall have been issued or shall be secured: *Provided*, That in any case where more than one class of securities shall have been issued and be outstanding or shall be secured pursuant to any instrument, any alteration or modification proposed as to any provision of such instrument which does not relate to all of the classes of securities issued thereunder, shall be deemed to affect only the class or classes of securities to which such alteration or modification is related. For the purpose of the finding of the Commission referred to in paragraph (2) of this section as to whether the required percentage of the aggregate principal amount or number of shares outstanding of each class of securities affected by any proposed alteration or modification has assented to the making of such alteration or modification, any security which secures any evidence or evidences of indebtedness of the carrier or of any company controlling or controlled by the carrier shall be deemed to be outstanding unless the Commission in its discretion determines that the proposed alteration or modification does not materially affect the interests of the holder or holders of the evidence or evidences of indebtedness secured by such security. Whenever any such pledged security is, for said purposes, to be deemed outstanding, assent in respect of such security, as to any proposed alteration or modification, may be given only (any express or implied provision in any mortgage, indenture, deed of trust, note, or other instrument to the contrary notwithstanding) as follows: (a) Where such security is pledged as security under a mortgage, indenture, deed of trust, or other instrument, pursuant to which any evidences of indebtedness are issued and outstanding, by the holders of a majority in principal amount of such evidences of indebtedness, or (b) where such security secures an evidence or evidences of indebtedness not issued pursuant to such a mortgage, indenture, deed of trust, or other instrument, by the holder or holders of such evidence or evidences of indebtedness; and in any such case the Commission, in addition to the submission

Securities deemed outstanding.

Pledged security, outstanding; method of giving assent.

Submission to
holders of evi-
dences of in-
debtedness

71 Stat. 370.

When security.
evidence of in-
debtedness, not
outstanding.

Division into
classes.

referred to in paragraph (2) of this section, shall cause the carrier in such manner as it shall direct to submit the proposed alteration or modification (with such terms, shall have determined to be just and reasonable) for acceptance or rejection, to the holders of the evidences of indebtedness issued and outstanding pursuant to such mortgage, indenture, deed of trust, or other instrument, or to the holder or holders of such evidence or evidences of indebtedness not so issued, and such proposed alteration or modification need not be submitted to the trustee of any such mortgage, indenture, deed of trust, or other instrument, but assent in respect of any such security shall be determined as hereinbefore in this section provided. For the purposes of this section a security (other than a security entitled to vote for the election of directors of the carrier) or an evidence of indebtedness shall not be deemed to be outstanding if, in the determination of the Commission, the assent of the holder thereof to any proposed alteration or modification is within the control of the carrier or of any person or persons controlling the carrier. The Commission shall, for the purposes of this section, divide the securities to be affected by any proposed alteration or modification into such classes as it shall determine to be just and reasonable.

NOTE.—By § 3 of the amendatory act of Aug. 16, 1957, it is provided that amendments of paragraphs (2) and (3) shall take effect on the first day of the fourth month following the month in which the act is enacted.

Assumption of
liability;
effect of
modification.

Consent in
writing.

(4) (a) Any authorization and approval hereunder of any alteration or modification of a provision of any class of securities of a carrier or of a provision of any instrument pursuant to which a class of securities has been issued, or by which it is secured, shall be deemed to constitute authorization and approval of a corresponding alteration or modification of the obligation of any other carrier which has assumed liability in respect of such class of securities as guarantor, endorser, surety, or otherwise: *Provided*, That such other carrier consents in writing to such alteration or modification of such class of securities in respect of which it has assumed liability or of the instrument pursuant to which such class of securities has been issued or by which it is secured and, such consent having been given, any such corresponding alteration or modification shall become effective, without other action, when the alteration or modification of such class of securities or of such instrument shall become and be binding.

Person deemed
"carrier."

(b) Any person who is liable or obligated contingently or otherwise on any class or classes of securities issued by a carrier shall, with respect to such class or classes of securities, for the purposes of this section, be deemed a carrier.

(5) The authority conferred by this section shall be exclusive and plenary and any carrier, in respect of any alteration or modification authorized and approved by the Commission hereunder, shall have full power to make any such alteration or modification and to take any actions incidental or appropriate thereto, and may make any such alteration or modification and take any such actions, and any such alteration or modification may be made without securing the approval of the Commission under any other section of this Act or other paragraph of this section, and without securing approval of any State authority, and any carrier and its officers and employees and any other persons, participating in the making of an alteration or modification approved and authorized under the provisions of this section or the taking of any such actions, shall be, and they hereby are, relieved from the operation of all restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to make and carry into effect the alteration or modification so approved and authorized in accordance with the conditions and with the amendments, if any, imposed by the Commission. Any power granted by this section to any carrier shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State. The provisions of this section shall not affect in any way the negotiability of any security of any carrier or of the obligation of any carrier which has assumed liability in respect thereto.

Authority
exclusive
and plenary.

Relief from
restraints of
Federal, State,
municipal law.

Corporate
charter, laws
of State.

(6) The Commission shall require periodical or special reports from each carrier which shall hereafter secure from the Commission approval and authorization of any alteration or modification under this section, which shall show, in such detail as the Commission may require, the action taken by the carrier in the making of such alteration or modification.

Periodical, spe-
cial, reports.

(7) The provisions of this section are permissive and not mandatory and shall not require any carrier to obtain authorization and approval of the Commission hereunder for the making of any alteration or modification of any provision of any of its securities or of any class thereof or of any provision of any mortgage, indenture, deed of trust, corporate charter, or other instrument, which it may be able lawfully to make in any other manner, whether by reason of provisions for the making of such alteration or modification in any such mortgage, indenture, deed of trust, corporate charter, or other instrument, or otherwise: *Provided*, That the provisions of paragraph (2) of section 20a, if applicable to such alteration or modification made otherwise than pursuant to the provisions of this section, shall continue to be so applicable.

Provisions
permissive.

Applicability
of § 20a.

- Notice. (8) The provisions of paragraph (6) of section 20a, except the provisions thereof in respect of hearings, shall apply to applications made under this section. In connection with any order entered by the Commission pursuant to paragraph (2) hereof, the Commission may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any such order, subject always to the requirements of said paragraph (2).
- Supplemental orders. (9) The provisions of subdivision (a) of section 14 of the Securities Exchange Act of 1934 shall not apply to any solicitation in connection with a proposed alteration or modification pursuant to this section.
- Solicitation of proxies. (10) The Commission shall have the power to make such rules and regulations appropriate to its administration of the provisions of this section as it shall deem necessary or desirable.
- Rules, regulations. (11) Any issuance of securities under this section which shall be found by the Commission to comply with the requirements of paragraph (2) of section 20a shall be deemed to be an issuance which is subject to the provisions of section 20a within the meaning of section 3 (a) (6) of the Securities Act of 1933, as amended. Section 5 of said Securities Act shall not apply to the issuance, sale, or exchange of certificates of deposit representing securities of, or claims against, any carrier which are issued by committees in proceedings under this section, and said certificates of deposit and transactions therein shall, for the purposes of said Securities Act, be deemed to be added to those exempted by sections 3 and 4, respectively of said Securities Act.
- § 20a applicable. (12) The provisions of sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to this section.
- Provisions, Securities Act of 1933, inapplicable. (13) The Commission shall not approve an application filed under this section by any carrier while in equity receivership or in process of reorganization under section 77 of the Bankruptcy Act, as amended, except that the Commission may approve an application filed by a carrier which, on the date of enactment of this Act, is in equity receivership and with respect to which no order confirming the sale of the carrier's property has been entered, or is in process of reorganization under section 77 and with respect to which no order confirming a plan shall have been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a circuit court of appeals or the matter is pending
- Tax provisions inapplicable.
- Carriers in receivership, reorganization.

in the Supreme Court on a petition to review any order of a circuit court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, if prior to the filing of such application with the Commission such carrier shall have applied for and been granted permission to file such application by the district judge before whom the equity receivership or section 77 proceeding is pending. Any such carrier applying for permission to file such application shall file with the court as a prerequisite to the granting of such permission (1) a copy of the proposed application, (2) a copy of the proposed plan of alteration or modification of its securities, and (3) assurances satisfactory to the court of the acceptance of such plan from holders of at least 25 per centum of the aggregate amount of all securities, including not less than 25 per centum of the aggregate amount of all creditors' claims, affected by such plan. An order of a district judge granting or withholding such permission shall be final and shall not be subject to review. Upon granting of such permission, such proceeding, so far as it relates to a plan of reorganization, shall be suspended until the Commission shall have notified the court that (a) the application filed by such carrier under this section has been dismissed or denied by the Commission or withdrawn, (b) the Commission has approved and authorized an alteration or modification under this section with respect to the securities of such carrier, or (c) twelve months have elapsed since the filing of such application and no such alteration or modification has been approved and authorized by the Commission. Upon receipt by the court of notification that such application has been dismissed or denied or withdrawn or that twelve months have elapsed and no alteration or modification has been approved and authorized, the equity receivership or section 77 proceeding shall be resumed as though permission to file application under this section had not been granted. Upon receipt by the court of notification that the Commission has authorized and approved such alteration or modification of the carrier's securities under this section as, in the judgment of the court, makes further receivership or section 77 proceeding unnecessary, the court shall enter an order restoring custody of the property to the debtor, and making such other provision as may be necessary to terminate the equity receivership or section 77 proceeding.

Application
filed with
court.

Grant, or
withholding of
permission,
final.

Resumption
of receivership
or reorganiza-
tion proceed-
ings.

Termination,
receivership,
reorganization,
proceeding.

NOTE.—The balance of the act of April 9, 1948, i.e., §§ 3, 4, is a part of the bankruptcy law, and appears herein after § 77 thereof, title 11, *infra*, and is numbered in the U.S. Code as 11 U.S.C. § 208(a), (b), with the original § 4 appearing as a Separability Clause.

Reference in § 20b(9) to § 14 of the Securities Exchange Act of 1934 is cited in the U.S. Code as 15 U.S.C. § 78n. Sec. 3

(a) (6) of the Securities Act of 1933 (par. (11)), is § 77e of Title 15, U.S. Code, which provides "Prohibitions relating to interstate commerce and the mails."

Savings clause: § 3(a) (6) of the Securities Act of 1933, 15 U.S.C. § 77c(a) (6), reads; "Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities: * * * (6) Any security issued by a common or contract carrier, the issuance of which is subject to the provisions of section 20a of title 49."

FILING OF EQUIPMENT TRUST AGREEMENTS, DOCUMENTS,
LEASE, MORTGAGE, CONDITIONAL SALE, BAILMENT OF RAIL-
ROAD EQUIPMENT

66 Stat. 724,
725.

Railroad
equipment.

Notice.

Recordation.

SEC. 20c. [*July 16, 1952.*] [*49 U.S.C. § 20c.*] Any mortgage, lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of railroad cars, locomotives, or other rolling stock, used or intended for use in connection with interstate commerce, or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in bankruptcy of, the mortgagor, buyer, lessee or bailee of the equipment covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district or possession thereof, respecting the filing, deposit, registration or recordation of such instruments or documents. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge or satisfaction thereof, and shall record in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such

other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions.

NOTE.—Similar provisions, home State recordation, Part II, motor-carrier vehicles, see § 213, *infra*; commission recordation, Part III, water carrier vessels, see § 323.

Fees and charges, prescribed, 5 U. S. C. § 140, 65 Stat. 290.

ANNUAL REPORT OF COMMISSION

SEC. 21. [*As amended March 2, 1889, May 23, 1935.*] [49 U. S. C. § 21.] The Commission shall, on or before the 3d day of January of each year, make a report which shall be transmitted to Congress and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

24 Stat. 387.
49 Stat. 287.

Annual reports
of Commission
to Congress.

25 Stat. 862.

NOTE.—Comparable provisions as to recommendations to Congress, part II, § 204 (a) (7); part III, § 304 (b); part IV, § 403 (e). Report to Congress as to need for Federal regulation of size and weight of motor vehicles, and qualifications and hours of service of employees, § 226.

Final clause of above § 21 is considered repealed by act of May 29, 1928, § 2, 45 Stat. 986, although repeated in the amendatory act of May 23, 1935, above cited.

RESTRICTIONS

SEC. 22. [*As amended March 2, 1889, February 8, 1895, August 18, 1922, February 26, 1927, March 4, 1927, June 27, 1934, August 9, 1935, July 5, 1937, August 25, 1937, September 18, 1940, September 27, 1944, July 27, 1956, August 31, 1957.*] [49 U.S.C. § 22.] (1) That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this part shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes,

24 Stat. 387.
25 Stat. 862.
28 Stat. 643.
42 Stat. 827.
44 Stat. 1247.
48 Stat. 1264.
49 Stat. 543.
50 Stat. 475,
809.

54 Stat. 900.
58 Stat. 751.
70 Stat. 702.
71 Stat. 564.
Transportation
free or at re-
duced rates—

—for govern-
mental or
charitable
purposes.

Mileage, excu-
sion, or commu-
tation passen-
ger tickets.

including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this part shall be construed to prohibit any common carrier from establishing by publication and filing in the manner prescribed in section 6 reduced fares for application to the transportation of (a) personnel of United States armed services or of foreign armed services, when such persons are traveling at their own expense, in uniform of those services, and while on official leave, furlough, or pass; or (b) persons discharged, retired, or released from United States armed services within thirty days prior to the commencement of such transportation and traveling at their own expense to their homes or other prospective places of abode; nothing in this part shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the free carriage, storage, or handling by a carrier of the household goods and other personal effects of its own officers or employees when such goods and effects must necessarily be moved from one place to another as a result of a change in the place of employment of such officers or employees while in the service of the carrier, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this part contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this part are in addition to such remedies; nothing in this part shall be construed to prohibit any common carrier from carrying any totally blind person accompanied by a guide or seeing-eye dog or other guide dog specially trained and educated for that purpose, or from carrying a disabled person accompanied by an attendant if such person is disabled to the extent of requiring such attendant, at the usual and ordinary fare charged to one person, under such reasonable regulations as may have been established by the carrier: *Provided*, That no pending litigation shall in any way be affected by this part: *Provided further*. That nothing in this part shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this part, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the

58 Stat. 751.

54 Stat. 900.

Common law
remedies
preserved.
44 Stat. 1247.

Blind person
and guide dog or
guide dog at
one fare.
50 Stat. 475.
70 Stat. 702.
Disabled person,
attendant.

Joint interchangeable
five-thousand-mile
tickets.
Free baggage.

28 Stat. 643.

Rates to be
published,
filed, and
observed.

same manner as common carriers are required to do with regard to other joint rates by section six of this part; changeable mileage ticket as with regard to other joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission or authorized to be issued any such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this part shall apply to any violation of the requirements of the proviso. Nothing in this part shall prevent any carrier or carriers subject to this part from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the Commission (with or without a hearing); but in any such order the Commission shall (1) define such section, (2) specify the period during which such reduced rates are to remain in effect, and (3) clearly define the class or classes of persons entitled to such reduced rates: *Provided*, That any such order may define the class or classes entitled to such reduced rates as being persons designated as being in distress and in need of relief by agents of the United States or any State authorized to assist in relieving the distress caused by any such calamitous visitation or disaster. No carrier subject to the provisions of this part shall be deemed to have violated the provisions of such part with respect to undue or unreasonable preference or unjust discrimination by reason of the fact that such carrier extends such reduced rates only to the class or classes of persons defined in the order of the Commission authorizing such reduced rates.

Penalties.

44 Stat. 1446.

Reduced rates
in case of
calamitous
visitation.

—order author-
izing.

50 Stat. 809

Carriers not
deemed viola-
tors of secs. 2
and 3.

NOTE.—Provisions of this section apply to common carriers part II, § 217(b); part III, § 306(c); provisions as to property apply to freight forwarders, part IV, § 405(c).

National Home for Disabled Volunteer Soldiers, referred to above, was abolished by act of July 3, 1930, 38 U.S.C. § 11d, 46 Stat. 1017.

Repeal, land-grant rates, Government traffic, § 321, § 322, *infra*.

By § 1 of Act of August 29, 1916, 32 U.S.C. § 73, it is provided:
* * * That hereafter nothing in the Act of February fourth, eighteen hundred and eighty-seven, known as the Act to regulate commerce, or any amendments thereto, shall be construed to

prohibit any common carrier from giving reduced rates for members of National Guard organizations traveling to and from joint encampments with the Regular Army. * * *

71 Stat. 564

Government property or persons, written tenders.

§ 5a applicable.

Submittal.

Public inspection.

Disclosure of information.

25 Stat. 862.
49 Stat. 543.
56 Stat. 301.

Mandamus to compel movement of traffic or the furnishing of transportation facilities.

(2) All quotations or tenders of rates, fares or charges under paragraph (1) of this section for the transportation, storage, or handling of property or the transportation of persons free or at reduced rates for the United States Government, or any agency or department thereof, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, shall be in writing or confirmed in writing and a copy or copies thereof shall be submitted to the Commission by the carrier or carriers offering such tenders or quotations in the manner specified by the Commission and only upon the submittal of such a quotation or tender made pursuant to an agreement approved by the Commission under section 5a or section 5b of this Act shall the provisions of paragraph (9) of such section 5a or paragraph (8) of such section 5b apply, but said provisions shall continue to apply as to any agreement so approved by the Commission under which any such quotation or tender (a) was made prior to the effective date of this paragraph or (b) is hereafter made and for security reasons, as hereinafter provided, is not submitted to the Commission: *Provided*, That nothing in this paragraph shall affect any liability or cause of action which may have accrued prior to the date on which this paragraph takes effect. Submittal of such quotations or tenders to the Commission shall be made concurrently with submittal to the United States Government, or any agency or department thereof, for whose account the quotations or tenders are offered or for whom the proposed services are to be rendered. Such quotations or tenders shall be preserved by the Commission for public inspection. The provisions of this paragraph requiring submissions to the Commission shall not apply to any quotation or tender which, as indicated by the United States Government, or any agency or department thereof, to any carrier or carriers, involves information the disclosure of which would endanger the national security.

MANDAMUS TO OBTAIN EQUAL FACILITIES FOR SHIPPERS

SEC. 23. [March 2, 1889, amended August 9, 1935, May 16, 1972] [49 U. S. C. § 23] That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the part to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of manda-

mus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this part or the Act to which it is a supplement.

Writ may issue although compensation for service undetermined.

Remedy by mandamus is cumulative.

By XI.—General Provisions, Title 28 U. S. C., Rule 81 (b), it is provided: The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules. (1946 Edition, p. 3337). In note to Subdivision (b), setting out "Some statutes which will be affected by this subdivision" are: U. S. C., Title 49: § 19a (1) (Mandamus to compel compliance with Interstate Commerce Act); § 20 (9) (Jurisdiction to compel compliance with interstate commerce laws by mandamus). (1946 Edition, p. 3338).

ENLARGEMENT OF COMMISSION; SALARIES OF COMMISSIONERS AND SECRETARY

SEC. 24. [June 29, 1906, amended August 9, 1917, February 28, 1920, July 16, 1935, October 15, 1949.] [49 U.S.C. §§ 11, 18.] That the Commission is hereby enlarged so as to consist of eleven members, with terms of seven years, and each shall receive \$12,000 compensation annually. The qualifications of the members and the manner of payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December 31, 1923, and one for a term expiring December 31, 1924. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom

34 Stat. 584.
40 Stat. 595.
41 Stat. 497.
49 Stat. 481.

Commission enlarged—

—members;
terms; compensation.

—terms of
present and
additional
Commissioners.

—qualifica-
tions.
49 Stat. 481.
Commissioner
to serve until
successor quali-
fied.

Salary of secre-
tary.

he shall succeed. Not more than six Commissioners shall be appointed from the same political party. Upon the expiration of his term of office a Commissioner shall continue to serve until his successor is appointed and shall have qualified. Hereafter the salary of the secretary of the Commission shall be \$7,500 a year.

Note.—Effective Dec. 16, 1967, compensation of members of the Commission is determined under Chapter 11, Title 2, USC, through the Commission on Executive, Legislative, and Judicial Salaries. Upon recommendation of the President of the United States, the annual rate of basic compensation of the Commissioners after Feb. 14, 1969, is \$38,000, and that of the Chairman of the Commission is \$40,000. See note following Section 358 of title 2, USC.

See also §18(1), *Supra*

SAFETY APPLIANCES, METHODS, AND SYSTEMS

NOTE.—The functions, powers, and duties in § 25 were transferred to the Secretary of Transportation. P L 89—670.

41 Stat. 498.
49 Stat. 543.
50 Stat. 835.
54 Stat. 919.
80 Stat. 939.

“Carrier” de-
fined.

Exception.

SEC. 25. [*February 28, 1920, August 9, 1935, August 26, 1937, September 18, 1940, October 15, 1966.*] [49 U.S.C. § 26.] (a) The term “carrier” as used in this section includes any carrier by railroad subject to this part (including any terminal or station company), and any receiver or any other individual or body, judicial or otherwise, when in the possession of the business of a carrier subject to this section: *Provided, however,* That the term “carrier” shall not include any street, interurban, or suburban electric railway unless such railway is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of a general steam-railroad system of transportation now or hereafter operated by any other motive power.

Safety devices
prescribed by
Commission.

(b) That the Commission may, after investigation, if found necessary in the public interest, order any carrier within a time specified in the order, to install the block signal system, interlocking, automatic train stop, train control, and/or cab-signal devices, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation, which comply with specifications and requirements prescribed by the Commission, upon the whole or any part of its railroad such order to be issued and published as reasonable time (as determined by the Commission) in advance of the date for its fulfillment: *Provided,* That block signal systems, interlocking, automatic train stop, train control, and cab-signal devices in use on the date of the enactment of this amendatory provision or such systems or devices hereinafter installed may not be discontinued or materially modified by carriers without the approval of the Commission: *Provided further,* That a carrier shall not

Discontinuance
or modification
of existing de-
vices, approval.

be held to be negligent because of its failure to install such systems, devices, appliances, or methods upon a portion of its railroad not included in the order, and any action arising because of an accident occurring upon such portion of its railroad shall be determined without consideration of the use of such systems, devices, appliances, or methods upon another portion of its railroad.

Rule as to
negligence.

(c) Each carrier by railroad shall file with the Commission its rules, standards, and instructions for the installation, inspection, maintenance, and repair of the systems, devices, and appliances covered by this section within six months after the enactment of this amendatory provision, and, after approval by the Commission, such rules, standards, and instructions, with such modifications as the Commission may require, shall become obligatory upon the carrier: *Provided, however,* That if any such carrier shall fail to file its rules, standards, and instructions the Commission shall prepare rules, standards, and instructions for the installation, inspection, maintenance, and repair of such systems, devices, and appliances to be observed by such carrier, which rules, standards, and instructions, a copy thereof having been served on the president, chief operating officer, trustee, or receiver, of such carrier, shall be obligatory: *Provided further,* That such carrier may from time to time change the rules, standards, and instructions herein provided for, but such change shall not take effect and the new rules, standards, and instructions be enforced until they shall have been filed with and approved by the Commission: *And provided further,* That the Commission may on its own motion, upon good cause shown, revise, amend, or modify the rules, standards, and instructions prescribed by it under this subsection, and as revised, amended, or modified they shall be obligatory upon the carrier after a copy thereof shall have been served as above provided.

Carriers to file
installation, in-
spection, and
maintenance
rules; ap-
proval.

—preparation
by Commission.
unless filed.

—changes, fil-
ing, approval.

—modification
required by
Commission.

Inspection by
Commission.

Employment
of inspectors.

(d) The Commission is authorized to inspect and test any systems, devices, and appliances referred to in this section used by any such carrier and to determine whether such systems, devices, and appliances are in proper condition to operate and provide adequate safety. For these purposes the Commission is authorized to employ persons familiar with the subject. Such persons shall be in the classified service and shall be appointed after competitive examination according to the law and the rules of the Civil Service Commission governing the classified service. No person interested, either directly or indirectly, in any patented article required to be used on or in connection with any of such systems, devices, and appliances or who has any financial interest in any carrier or in any concern dealing in railway supplies shall be used for such purpose.

—qualifica-
tions.

Unsafe devices
prohibited.

Uninspected
devices
prohibited.

Reports to
Commission.
—failures :
accidents.

—Investigation
by Commission.

Commission to
enforce safety
provisions.

Penalty for
violation.

—suits for
penalty.

(e) It shall be unlawful for any carrier to use or permit to be used on its line any system, device, or appliance covered by this section unless such apparatus, with its controlling and operating appurtenances, is in proper condition and safe to operate in the service to which it is put, so that the same may be used without unnecessary peril to life and limb, and unless such apparatus, with its controlling and operating appurtenances, has been inspected from time to time in accordance with the provisions of this section and is able to meet the requirements of such test or tests as may be prescribed in the rules and regulations hereinbefore provided.

(f) Each carrier shall report to the Commission in such manner and to such extent as may be required by the Commission, failures of such systems, devices, or appliances to indicate or function as intended; and in case of accident resulting from failure of any such system, device, or appliance to indicate or function as intended, and resulting in injury to person or property which is reportable under the rules of the Commission, a statement forthwith must be made in writing of the fact of such accident by the carrier owning or maintaining such system, device, or appliance to the Commission; whereupon the facts concerning such accident shall be subject to investigation as provided in sections 3, 4, and 5 of the Act entitled "An Act requiring common carriers engaged in interstate and foreign commerce to make full reports of all accidents to the Interstate Commerce Commission, and authorizing investigations thereof by said Commission", approved May 6, 1910 (U. S. C., 1934 ed. title 45, secs. 40, 41, and 42).

NOTE.—Comparable provision, § 1, Accident Reports Act, 45 U. S. C. § 38.

(g) It shall be the duty of the Commission to see that the requirements of this section and the orders, rules, regulations, standards, and instructions made, prescribed, or approved hereunder are observed by carriers, and all powers heretofore granted to the Commission are hereby extended to it in the execution of this section.

(h) Any carrier which violates any provision of this section, or which fails to comply with any of the orders, rules, regulations, standards, or instructions made, prescribed, or approved hereunder shall be liable to a penalty of not less than \$250 and not more than \$2,500 for each such violation and not less than \$250 and not more than \$2,500 for each and every day such violation, refusal, or neglect continues, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed. It shall be the duty of such attorneys to bring such suits upon duly verified information being lodged with them

showing such violations having occurred; and it shall be the duty of the Commission to lodge with the proper United States attorneys information of any violations of this section coming to its knowledge.

—Commission
to report
violations.

NOTE.—Further block-signal systems, for automatic train control, see Block Signal Resolution (45 U. S. C. § 35), *infra*.

The Transportation Act of 1940 repealed the former § 25 of part I, Export Bills of Lading, and substituted as § 25 the provisions of the then § 26 of part I. [For export bills of lading, see Carriage of Goods by Sea Act, 46 U. S. C. § 1300—§ 1315.]

NOTE.—Continued—See headnote. *supra*.

EXEMPTION OF CERTAIN COMPENSATION OF EMPLOYEES FROM WITHHOLDING FOR INCOME TAX PURPOSES FOR OTHER THAN STATE OR SUBDIVISION OF RESIDENCE OR STATE OF SUBDIVISION WHEREIN MORE THAN FIFTY PER CENTUM OF COMPENSATION IS EARNED

SEC. 26. [December 23, 1970] [49 U.S.C. § 26a.]

84 Stat. 1499.

(a) No part of the compensation paid by any railroad express company, or sleeping car company, subject to the provisions of this part, to an employee (1) who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State, or (2) who is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks out of railroad terminals in more than one State, shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence and the State or subdivision for which the withholding of such tax has been required under this subsection.

(b) (1) For the purposes of subsection (a) (1), an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.

(2) For the purposes of subsection (a) (2), an employee shall be deemed to have earned more than 50 per

centum of his compensation in any State or subdivision thereof in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.

"State."
"Compensation."

(c) For the purposes of this section the term "State" also means the District of Columbia; and the term "compensation" shall mean all moneys received for services rendered by an employee, as defined in subsection (a) in the performance of his duties and shall include wages and salary.

NOTE.—Comparable provision, Part II, § 226A; Part III, § 324.

OFFICE OF RAIL PUBLIC COUNSEL

90 Stat. 51.
Establishment.

SEC. 27. [February 5, 1976] [49 U.S.C. 266.] (1) There shall be established, within 60 days after the date of enactment of this section, a new independent office affiliated with the Commission to be known as the Office of Rail Public Counsel. The Office of Rail Public Counsel shall function continuously pursuant to this section and other applicable Federal laws.

Director.

(2)(a) The Office of Rail Public Counsel shall be administered by a Director. The Director shall be appointed by the President, by and with the advice and consent of the State.

Term.

(b) The term of office of the Director shall be 4 years. He shall be responsible for the discharge of the functions and duties of the Office of Rail Public Counsel. He shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

5 USC 5332
note.

(3) The Director is authorized to appoint, fix the compensation, and assign the duties of employees of such Office and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code. Each bureau, office, or other entity of the Commission and each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized to provide the Office of Rail Public Counsel with such information and data as it requests. The Director is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions and duties. The Director shall submit a monthly report on the activities of the Office of Rail Public Counsel to the Chairman of the Commission, and the Commission, in its annual report to the Congress, shall evaluate and make recommenda-

Report to Commission and Congress.

tions with respect to such Office and its activities, accomplishments, and shortcomings.

(4) In addition to any other duties and responsibilities prescribed by law, the Office of Rail Public Counsel—

(a) shall have standing to become a party to any proceeding, formal or informal, which is pending or initiated before the Commission and which involves a common carrier by railroad subject to this part;

(b) may petition the Commission for the initiation of proceedings on any matter within the jurisdiction of the Commission which involves a common carrier by railroad subject to this part;

(c) may seek judicial review of any Commission action on any matter involving a common carrier by railroad subject to this part, to the extent such review is authorized by law for any person and on the same basis;

(d) shall solicit, study, evaluate, and present before the Commission, in any proceeding, formal or informal, the views of those communities and users of rail service affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user of rail service might not otherwise be adequately represented before the Commission in the course of such proceedings; and

(e) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect rail transportation matters subject to the jurisdiction of the Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical rail transportation services.

In the performance of its duties under this paragraph, the Office of Rail Public Counsel shall assist the Commission in the development of a public interest record in proceedings before the Commission.

(5) The budget requests and budget estimates of the Office of Rail Public Counsel shall be submitted concurrently to the Congress and to the President.

(6) There are authorized to be appropriated to the Office of Rail Public Counsel for the purpose of carrying out the provisions of this section not to exceed \$500,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal year transition period ending September 30, 1976, and not to exceed \$2,000,000 for the fiscal year ending September 30, 1977.

Budget request and estimates, submitted to Congress and President. Appropriation authorization.

DISCRIMINATORY STATE TAXATION

SEC. 28. [February 5, 1976] [49 U.S.C. 26c.] (1) Notwithstanding the provisions of section 202(b), any action

90 Stat. 54.

described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the constitution or laws or any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

District courts,
jurisdiction.

(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

(3) As used in this section, the term—

(a) 'assessment' means valuation for purposes of a property tax levied by any taxing district;

(b) 'assessment jurisdiction' means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

(c) 'commercial and industrial property' or 'all other commercial and industrial property' means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

(d) 'transportation property' means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation.

CITATION

SEC. 29. [*February 28, 1920, amended August 9, 1935, September 18, 1940, December 23, 1970*] [49 U.S.C § 27.] This part may be cited as part I of the Interstate Commerce Act.

Definitions.
41 Stat. 499.
49 Stat. 543.
54 Stat. 919.
84 Stat. 1499
90 Stat. 51.
Citation.

RAIL PASSENGER SERVICE ACT

RAIL PASSENGER SERVICE ACT

(as amended through 1976)

AN ACT To provide financial assistance for and establishment of a national rail passenger system, to provide for the modernization of railroad passenger equipment, to authorize the prescribing of minimum standards for railroad passenger service, to amend section 13a of the Interstate Commerce Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rail Passenger Service Act".

TITLE I—FINDINGS, PURPOSES, AND DEFINITIONS

SEC. 101. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.

The Congress finds that modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system; that the public convenience and necessity require the continuance and improvement of such service to provide fast and comfortable transportation between crowded urban areas and in other areas of the country; that rail passenger service can help to end the congestion on our highways and the overcrowding of airways and airports; that the traveler in America should to the maximum extent feasible have freedom to choose the mode of travel most convenient to his needs; that to achieve these goals requires the designation of a basic national rail passenger system and the establishment of a Rail Passenger Corporation for the purpose of providing modern, efficient, intercity rail passenger service; that Federal financial assistance as well as investment capital from the private sector of the economy is needed for this purpose; and that interim emergency Federal financial assistance to certain railroads may be necessary to permit the orderly transfer of railroad passenger service to a Railroad Passenger Corporation.

SEC. 102. DEFINITIONS.

For the purposes of this Act—

(1) "Railroad" means a common carrier by railroad, as defined in section 1(3) of part I of the Interstate Commerce Act, as amended (49 U.S.C. 1(3)) other than the Corporation created by title III of this Act.

(2) "Secretary" means the Secretary of Transportation or his delegate unless the context indicates otherwise.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Basic system" means the system of intercity rail passenger service designated by the Secretary under title II and section 403(a) of this Act.

(5) "Intercity rail passenger service" means all rail passenger service other than commuter and other short-haul service in metro-

politan and suburban areas, usually characterized by reduced fare, multiple-ride and commutation tickets, and by morning and evening peak period operations.

(6) "Avoidable loss" means the avoidable costs of providing passenger service, less revenues attributable thereto, as determined by the Interstate Commerce Commission pursuant to the provisions of section 553 of title 5, United States Code.

(7) "Corporation" means the National Railroad Passenger Corporation created under title III of this Act.

(8) "Regional transportation agency" means an authority, corporation, or other entity established for the purpose of providing passenger service within a region.

(9) "Auto-ferry service" means intercity rail passenger service characterized by transportation of automobiles and their occupants.

TITLE II—BASIC NATIONAL RAIL PASSENGER SYSTEM

SEC. 201. DESIGNATION OF SYSTEM.

In carrying out the congressional findings and declaration of purpose set forth in title I of this Act, the Secretary, acting in cooperation with other interested Federal agencies and departments, is authorized and directed to submit to the Commission and to the Congress within 30 days after the date of enactment of this Act his preliminary report and recommendations for the basic system. Such recommendations shall specify those points between which intercity passenger trains shall be operated, identify all routes over which service may be provided, and the trains presently operated over such routes, together with basic service characteristics of operations to be provided within the basic system, taking into account schedules, number of trains, connections, through car service, and sleeping, parlor, dining, and lounge facilities. In recommending the basic system the Secretary shall take into account the need for expeditious intercity rail passenger service within and between all regions of the continental United States, and the Secretary shall consider the need for such service within the States of Alaska and Hawaii and the Commonwealth of Puerto Rico. In formulating such recommendations the Secretary shall consider opportunities for provision of faster service, more convenient service, service to more centers of population, and service at lower cost, by the joint operation, for passenger service, of facilities of two or more railroad companies; the importance of a given service to overall viability of the basic system; adequacy of other transportation facilities serving the same points; unique characteristics and advantages of rail service as compared to other modes of transportation; the relationship of public benefits of given services to the costs of providing such services; and potential profitability of the service. The exclusion of a particular route, train, or service from the basic system shall not be deemed to create a presumption that the route, train, or service is not required by public convenience and necessity in any proceeding under section 13a of the Interstate Commerce Act (49 U.S.C. 13a).

SEC. 202. REVIEW OF THE BASIC SYSTEM.

The Commission, the State Commissions, the representatives of the railroads, and labor organizations duly authorized under the Railway

Labor Act to represent railroad employees shall, within 30 days after receipt of the preliminary report of the Secretary designating the basic system, review such report consistent with the purposes of this Act and provide the Secretary with their comments and recommendations in writing. The Secretary shall give due consideration to such comments and recommendations. The Secretary shall, within 90 days after the date of enactment of this Act, submit his final report designating the basic system to the Congress. Such final report shall include a summary of their recommendations together with his reasons for failing to adopt any such recommendation. The basic system as designated by the Secretary shall become effective for the purposes of this Act upon the date that the final report of the Secretary is submitted to Congress and shall not be reviewable in any court.

TITLE III—CREATION OF A RAIL PASSENGER CORPORATION

SEC. 301. CREATION OF THE CORPORATION.

There is authorized to be created a National Railroad Passenger Corporation. The Corporation shall be a for profit corporation, the purpose of which shall be to provide intercity rail passenger service, employing innovative operating and marketing concepts so as to fully develop the potential of modern rail service in meeting the Nation's intercity passenger transportation requirements. The Corporation will not be an agency or establishment of the U.S. Government. It shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

SEC. 302. PROCESS OF ORGANIZATION.

The President of the United States shall appoint not fewer than three incorporators, by and with the advice and consent of the Senate, who shall also serve as the board of directors for one hundred and eighty days following the date of enactment of this Act. The incorporators shall take whatever actions are necessary to establish the Corporation, including the filing of articles of incorporation, as approved by the President.

SEC. 303. DIRECTORS AND OFFICERS.

(a)(1) The Corporation shall have a board of directors consisting of seventeen individuals who are citizens of the United States selected as follows:

(A) The Secretary of Transportation, ex officio, and the President of the Corporation, ex officio.

(B) Eight members appointed by the President, by and with the advice and consent of the Senate, to serve for terms of four years or until their successors have been appointed and qualified, of whom not more than five shall be appointed from the same political party.

(C) Three members elected annually by the common stockholders of the Corporation.

(D) Four members elected annually by the preferred stockholders of the Corporation, which members shall be elected as soon

as practicable after the first issuance of preferred stock by the Corporation.

(2) Any vacancy in the membership of the board shall be filled in the same manner as in the case of the original selection; except that any member appointed by the President under paragraph (1)(B) of this subsection to fill a vacancy shall be appointed only for the unexpired term of the member he is appointed to succeed.

(3) The board shall elect one of its members annually to serve as Chairman.

(4) Not less than three members appointed by the President shall be designated by him, at the time of their appointment, to serve as consumer representatives, of whom not more than two shall be members of the same political party.

(5) Each member not employed by the Federal Government shall receive compensation at the rate of \$300 per diem when engaged in the actual performance of duties. In addition, each member shall be reimbursed for necessary travel, secretarial or professional staff support which is reasonably required and subsistence expenses incurred in attending meetings of the board.

(6) No member elected by railroads shall vote on any action of the board relating to any contract or operating relationship between the Corporation and a railroad, but he may be present at meetings of the board at which such matters are voted upon, and he may be included for purposes of determining a quorum and may participate in discussions at any such meeting.

(7) No member appointed by the President may—

(A) have any direct or indirect financial or employment relationship with any railroad, nor

(B) have any significant direct or indirect financial relationship, or any direct or indirect employment relationship, with any person engaged in the transportation of passengers in competition with the Corporation, during the time that he serves on the board.

(8) Pending the election of the four members by the preferred stockholders of the Corporation under paragraph (1)(D) of this subsection, seven members shall constitute a quorum for the purpose of conducting the business of the board.

(9) Any vacancy in the membership of the board of directors required to be filled by appointment by the President under paragraph (1)(B) of this subsection shall be filled by the President not more than one hundred and twenty days after such vacancy occurs.

(b) The board of directors is empowered to adopt and amend bylaws governing the operation of the Corporation. Such bylaws shall not be inconsistent with the provisions of this Act or of the articles of incorporation.

(c) The articles of incorporation of the Corporation shall provide for cumulative voting for all stockholders and shall provide that, upon conversion of one-fourth of the outstanding shares of preferred stock, the common stockholders shall be entitled to elect four directors and the preferred stockholders shall be entitled to elect three directors; upon the conversion of one-half of the outstanding shares of preferred stock, the common stockholders shall be entitled to elect five directors and the preferred stockholders shall be entitled to elect two directors;

upon the conversion of three-fourths of the outstanding shares of preferred stock, the common stockholders shall be entitled to elect six directors and the preferred stockholders shall be entitled to elect one director; and upon conversion of all outstanding shares of preferred stock, the common stockholders shall be entitled to elect seven directors. Any change of directors resulting from such stock conversion shall take effect at the next annual meeting of the Corporation following such stock conversion.

(d) The Corporation shall have a president and such other officers as may be named and appointed by the board. The rates of compensation of all officers shall be fixed by the board. No officer of the Corporation shall receive compensation at a rate in excess of that prescribed for level I of the Executive Schedule under section 5312 of title 5, United States Code; except that this limitation upon compensation shall not apply in the case of the president of the Corporation if the board determines with respect to such officer that a higher level of compensation is necessary and is not higher than \$85,000 or the general level of compensation paid officers of railroads in positions of comparable responsibility, whichever is lesser. Officers shall serve at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation may have any direct or indirect employment or financial relationship with any railroad during the time of his employment by the Corporation.

SEC. 304. FINANCING OF THE CORPORATION.

(a) The Corporation is authorized to issue and have outstanding, in such amounts as it shall determine, two issues of capital stock, a common and a preferred, each of which shall carry voting rights and be eligible for dividends. Common stock may be initially issued only to a railroad. Preferred stock may be issued to and held only by any person other than (1) a railroad or (2) any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act. The articles of incorporation of the Corporation shall provide for the following respective rights of each issue of stock:

(A) **COMMON STOCK.**—Common stock shall have a par value of \$10 per share and shall be designated fully paid and non-assessable. No dividends shall be paid on the common stock whenever dividends on the preferred stock are in arrears.

(B)(i) **PREFERRED STOCK.**—Preferred stock shall have a par value of \$100 per share and shall be designated fully paid and nonassessable. Dividends shall be fixed at a rate not less than 6 per centum per annum, and shall be cumulative so that, if for any dividend period dividends at the rate fixed in the articles of incorporation shall not have been declared and paid or set aside for payment on the preferred shares, the deficiency shall be declared and paid or set apart for payment prior to the making of any dividend or other distribution on the common shares.

(ii) Preferred stock shall be entitled to a liquidation preference over common stock, which shall entitle preferred stockholders to a liquidating payment not less than par value plus all accrued unpaid dividends prior to any payment on liquidation to common stockholders.

(iii) Preferred stock shall be convertible into shares of common stock at such time and upon such terms as the articles of incorporation shall provide.

(b) At no time after the initial issue is completed shall the aggregate of the shares of common stock of the Corporation voted by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act, directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control, exceed 33½ per centum of such shares issued and outstanding. If any railroad or any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act (49 U.S.C. 1(3)(b)), owns directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control, a number of shares in excess of 33½ per centum of the total number of common shares issued and outstanding, such excess number shall, for voting and quorum purposes, be deemed to be not issued and outstanding.

(c) At no time may any stockholder, or any syndicate or affiliated group of such stockholders, own more than 10 per centum of the shares of preferred stock of the Corporation issued and outstanding.

(d) The articles of incorporation shall provide that no shares of any issue of stock may be redeemed or repurchased for five years, following the date of enactment of this Act.

(e) The Corporation is authorized to issue, in addition to the stock authorized by subsection (a) of this section, nonvoting securities, bonds, debentures, and other certificates of indebtedness as it may determine.

(f) The requirement of section 45(b) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-920(b)) as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the Corporation, and they may exercise such rights without regard to the percentage of stock they hold.

SEC. 305. GENERAL POWERS OF THE CORPORATION.

(a) The Corporation is authorized to own, manage, operate, or contract for the operation of intercity trains operated for the purpose of providing modern, efficient, intercity transportation of passengers and to carry mail and express on such trains; to conduct research and development related to its mission; and to acquire by construction, purchase, or gift, or to contract for the use of, physical facilities, equipment, and devices necessary to rail passenger operations. Insofar as practicable, the Corporation shall directly operate and control all aspects of its rail passenger service. To carry out its functions and purposes, the Corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

(b) The Corporation shall take such actions as may be necessary to increase its revenues from the carriage of mail and express. Upon request by the Corporation, Federal departments and agencies shall, consistent with the provisions of existing law, provide such assistance as may be necessary in carrying out the purposes of this subsection.

In order to increase revenues and to better accomplish the purposes of this Act, the Corporation is authorized to modify its services to provide auto-ferry service as a part of the basic passenger services authorized by this Act, except that nothing contained in this Act shall prevent any other person, other than a railroad (except that for purposes of this section a person primarily engaged in auto-ferry service shall not be deemed to be a railroad), from providing such auto-ferry service over any route in accordance with a certificate issued by the Commission if—

(1) the Commission finds that such auto-ferry service—

(A) will not impair the ability of the Corporation to reduce its losses or to increase its revenues, and

(B) is required to meet the demands of the public or,

(2) such auto-ferry service is being performed by such person on the date of enactment of this paragraph under contracts entered into before October 30, 1970.

Nothing in this section shall be construed to restrict the right of a railroad that has not entered into a contract with the Corporation for the provision of rail passenger service from performing auto-ferry service over its own lines. The Corporation is authorized to acquire, lease, modify, or develop the equipment and facilities required for the efficient provision of mail, express, and auto-ferry service, or to enter into contracts for the provision of such service.

(c) The Corporation is authorized to take all steps necessary to insure that no elderly or handicapped individual is denied intercity transportation on any passenger train operated by or on behalf of the Corporation, including but not limited to, acquiring special equipment and devices and conducting special training for employees; designing and acquiring new equipment and facilities and eliminating architectural and other barriers in existing equipment and facilities to comply with the highest standards for the design, construction, and alteration of property for the accommodation of elderly and handicapped individuals; and providing special assistance while boarding and alighting and in terminal areas to elderly and handicapped individuals.

(d)(1) The Corporation is authorized, to the extent financial resources are available—

(A) to acquire any property which the Secretary, acting in furtherance of his responsibility to design and construct an intermodal transportation terminal at Union Station in the District of Columbia, requests, upon assurance of full reimbursement by the Secretary; and

(B) to acquire any right-of-way, land, or other property (except right-of-way, land, or other property of a railroad or property of a State or political subdivision thereof or of any other governmental agency), which is required [for]¹ intercity rail passenger service;

by the exercise of the right of eminent domain, in accordance with the provisions of this subsection, in the district court of the United States for the judicial district in which such property is located or in any

¹ The word "for" probably deleted inadvertently by amendment made by section 705(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210).

such court if a single piece of property is located in more than one judicial district: *Provided*, That such right may only be exercised when the Corporation cannot acquire such property by contract or is unable to agree with the owner as to the amount of compensation to be paid.

(2) The Corporation shall file with the complaint, or at any time before judgment, a declaration of taking containing or having annexed thereto—

(A) a statement of the public use for which the property is taken;

(B) a description of the property taken sufficient for the identification thereof;

(C) a statement of the estate or interest in the property taken;

(D) a plan showing the property taken; and

(E) a statement of the amount of money estimated by the Corporation to be just compensation for the property taken.

(3) Upon the filing of the declaration of taking and the depositing in the court of the amount of money estimated in such declaration to be just compensation for the property, the property shall be deemed to be condemned and taken for the use of the Corporation. Title to such property shall thereupon vest in the Corporation in fee simple absolute or in any lesser estate or interest specified in the declaration of taking, and the right to the money deposited as estimated just compensation shall immediately vest in the persons entitled thereto. The court, after a hearing, shall make a finding as to the amount of money which constitutes just compensation for such property and shall make an award and enter judgment accordingly. Such judgment shall include, as part of the just compensation awarded, interest on the amount finally awarded as the value of the property on the date of taking minus the amount deposited in the court on such date, at the rate of 6 per centum per annum from the date of taking to the date of payment.

(4) Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded exceeds the amount of money received by any person entitled to compensation, the court shall enter judgment against the Corporation for the amount of the deficiency.

(5) Upon the filing of a declaration of taking, the court may fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the Corporation. The court may make such orders in respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

(e) The Corporation is authorized to take all steps necessary to—

(1) establish improved reservations systems and advertising;

(2) service, maintain, repair, and rehabilitate railroad passenger equipment;

(3) conduct research and development and demonstration programs respecting new rail passenger services;

(4) develop and demonstrate improved rolling stock;

(5) establish and maintain essential fixed facilities for the operation of passenger trains on lines and routes included in the basic

system, over which no through passenger trains are being operated at the time of enactment of this Act, including necessary track connections between lines on the same or different railroads;

(6) purchase or lease railroad rolling stock;

(7) develop and operating international intercity rail passenger service between points within the United States and points in Canada and Mexico, including Montreal, Canada; Vancouver, Canada; and Nuevo Laredo, Mexico (for purposes of section 404(b) of this Act, such international rail passenger service is service included within the basic system); and

(8) to carry out other corporate purposes.

(f) The Corporation shall, to the maximum extent practicable, directly perform all maintenance, rehabilitation, repair, and refurbishment of rail passenger equipment. Until the Corporation obtains, by purchase, lease, construction, or any other method of acquisition, Corporation-owned or controlled facilities which are adequate for the proper maintenance, repair, rehabilitation, and refurbishment of the rolling stock and other equipment and facilities of the Corporation, the railroads performing such services shall do so as expeditiously as possible.

(g) The Corporation shall advise, consult and cooperate with, and, upon request, is authorized to assist in any other manner the Secretary, the United States Railway Association, the Corps of Engineers, and the Consolidated Rail Corporation in order to facilitate completion and implementation of the Northeast Corridor project, as defined in section 206(a)(3) of the Regional Rail Reorganization Act of 1973, by the earliest practicable date. The Secretary shall assign the highest priority to the completion of such project.

(h) The Secretary of the Treasury and the Attorney General shall (consistent with the effective enforcement of the immigration and customs laws) establish and maintain, in cooperation with the Corporation, en route customs inspection and immigration procedures aboard trains operated in international intercity rail passenger service, which procedures will be convenient for passengers and will result in the most rapid possible transit in international intercity rail passenger service.

(i) The Corporation is authorized to employ security guards for purposes of providing security and protection for rail passengers of the Corporation and for rail properties owned by the Corporation. Security guards employed by the Corporation who have complied with the provisions of any State law setting forth licensing, residency, or related requirements applicable to security guards or persons employed in similar positions may be employed without regard to the provisions of any other State's laws setting forth such requirements.

SEC. 306. APPLICABILITY OF THE INTERSTATE COMMERCE ACT AND OTHER LAWS.

(a) The Corporation shall be deemed a common carrier by railroad within the meaning of section 1(3) of the Interstate Commerce Act and shall be subject to all provisions, including the provisions of section 22(1), of the Interstate Commerce Act, other than those pertaining to—

(1) regulation of rates, fares, and charges;

(2) abandonment or extension of lines of railroads utilized solely for passenger service, and the abandonment or extension

of operations over such lines of railroads, whether by trackage rights or otherwise;

(3) regulation of routes and service and, except as otherwise provided in this act, the discontinuance or change of passenger train service operations.

(b) The Corporation shall be subject to the same laws and regulations with respect to safety and with respect to the representation of its employees for purposes of collective bargaining, the handling of disputes between carriers and their employees, employee retirement, annuity and unemployment systems, and other dealings with its employees as any other common carrier subject to part I of the Interstate Commerce Act.

(c) The Corporation shall not be subject to any State or other law pertaining to the transportation of passengers by railroad as it relates to rates, routes, or service.

(d) Leases and contracts entered into by the Corporation, regardless of the place where the same may be executed, shall be governed by the laws of the District of Columbia.

(e) Persons contracting with the Corporation for the joint use or operation of such facilities and equipment as may be necessary for the provision of efficient and expeditious passenger service shall be and are hereby relieved from all prohibitions of existing law, including the antitrust laws of the United States, with respect to such contracts, agreements, or lease insofar as may be necessary to enable them to enter into such contracts and to perform their obligations thereunder.

(f) All departments, agencies, and instrumentalities of the Federal Government shall, in authorizing travel in the continental United States for their employees or for members of the Armed Forces or commissioned services, treat travel by train (whether or not extra fare trains) on the same basis as travel by other authorized modes.

(g) The Corporation shall be subject to the provisions of section 552 of title 5, United States Code.

(h) No common carrier by railroad may refuse to participate with the Corporation in providing auto-ferry service on the grounds that a State or local law or regulation makes the service unlawful; and neither the Corporation nor such railroad shall be subject to any fine, penalty, or other sanction for violation of a State or local law or regulation which has the effect of prohibiting or impairing the provision of auto-ferry service.

(i) The provisions of section 361 of the Public Health Service Act (42 U.S.C. 264) shall not apply to waste disposal from railroad conveyances operated in intercity rail passenger service.

(j)(1) The establishment of through routes and joint fares, between the National Railroad Passenger Corporation and other intercity common carriers of passengers by rail and motor carriers of passengers, is consistent with the public interest and the national transportation policy. The Congress encourages the making of such arrangements.

(2) The Corporation may establish through routes and joint fares with any motor carrier.

(k) The Commission shall, by September 30, 1977, conduct and transmit to the Congress a study of through routes and joint fares between the Corporation and other intercity common carriers by rail

and motor carriers of passengers. Such study shall include, but not be limited to—

(1) a history of through route and joint fare arrangements between motor carriers of passengers and carriers of passengers by rail;

(2) laws and regulations presently applicable or related to such through route and joint fare arrangements;

(3) analysis of the need for intermodal terminals, through ticketing and baggage handling arrangements, and the means by which such needs should be met;

(4) the extent to which any existing arrangements have improved or lessened, or might improve or lessen, the adequacy of service and passenger convenience;

(5) methods of formulating joint fares and divisions thereof;

(6) views of the Corporation, other intercity common carriers by rail and of organizations representing intercity bus operators; and

(7) recommendations relative to the establishment of through routes and joint fares between railroads and motor carriers of passengers, including any recommendations for legislation.

SEC. 307. SANCTIONS.

(a) If the Corporation or any railroad engages in or adheres to any action, practice, or policy inconsistent with the policies and purposes of this Act, obstructs or interferes with any activities authorized by this Act, refuses, fails, or neglects to discharge its duties and responsibilities under this Act, or threatens any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which the Corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States, or, in a case involving a labor agreement, upon petition of any employee affected thereby, including duly authorized employee representatives, to grant such equitable relief as may be necessary or appropriate to prevent or terminate any violation, conduct, or threat.

(b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act.

SEC. 308. REPORTS TO THE CONGRESS.

(a)(1) Not later than the eightieth day following the end of each calendar month, the Corporation shall transmit to the Congress and release to the public the following information applicable to its operations for such calendar month:

(A) Total itemized revenues and expenses.

(B) Revenues and expenses of each train operated.

(C) Revenues and total expenses attributable to each railroad over which service is provided.

(2) Not later than the fifteenth day following the end of each calendar month, the Corporation shall transmit to the Congress and release to the public the following information applicable to its operations for such calendar month:

(A) The average number of passengers per day on board each train operated.

(B) The on-time performance at the final destination of each train operated, by route and by railroad.

(b) The Corporation shall transmit to the President and to the Congress by February 15 of each year beginning with 1973, and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act, including a statement of receipts and expenditures for the preceding fiscal year. At the time of its annual report, the Corporation shall submit such legislative recommendations as it deems desirable, including the amount of financial assistance needed for operations and for capital improvements, the manner and form in which the amount of such assistance should be computed, and the sources from which such assistance should be derived.

(c) The Secretary and the Commission shall transmit to the President and to the Congress by March 15 of each year (beginning with 1974) reports (or, in their discretion, a joint report) on the effectiveness of this Act in meeting the requirements for a balanced national transportation system, together with any legislative recommendations. Beginning in 1976, the Secretary's report on the Corporation shall be made part of the Department of Transportation annual report to the Congress.

TITLE IV—PROVISION OF RAIL PASSENGER SERVICES

SEC. 401. ASSUMPTION OF PASSENGER SERVICE BY THE CORPORATION; COMMENCEMENT OF OPERATIONS.

(a)(1) On or before May 1, 1971, the Corporation is authorized to contract and, upon written request therefor from a railroad, shall tender a contract to relieve the railroad, from and after May 1, 1971, of its entire responsibility for the provision of intercity rail passenger service. On or after March 1, 1973, but before January 1, 1975, the Corporation is authorized to contract, and upon written request therefor, shall tender a contract to relieve the railroad of its entire responsibility for the provision of intercity rail passenger service and such relief shall become effective upon the date on which such contract is entered into. Contracts may be entered into on or before May 1, 1971, notwithstanding the fact that the decision of the Commission under section 102(f) of this Act with respect to avoidable loss has not become final. Any contract entered into before such decision of the Commission has become final shall be subject to adjustment to assure that the contract is consistent with such final decision of the Commission. The contract may be made upon such terms and conditions as necessary to permit the Corporation to undertake passenger service on a timely basis. Upon its entering into a valid contract (including protective arrangements for employees), the railroad shall be relieved of all its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under part I of the Interstate Commerce Act or any State or other law relating to the provision of intercity passenger service: *Provided*, That any railroad discontinuing a train hereunder must give notice in accordance with the notice procedures contained in section 13a(1) of the Interstate Commerce Act.

(2) In consideration of being relieved of this responsibility by the Corporation, the railroad shall agree to pay to the Corporation each

year for three years an amount equal to one-third of 50 per centum of the fully distributed passenger service deficit of the railroad as reported to the Commission for the year ending December 31, 1969. The payment to the Corporation may be made in cash or, at the option of the Corporation, by the transfer of rail passenger equipment or the provision of future service as requested by the Corporation. Unless the railroad waives all rights to receive stock in exchange for its payments, the railroad shall receive common stock from the Corporation in an amount equivalent in par value to each payment.

(3) In agreeing to pay the amount specified in paragraph (2) of this subsection, a railroad may reserve the right to pay a lesser sum to be determined by calculating either of the following:

(A) 100 per centum of the avoidable loss of all intercity rail passenger service operated by the railroad during the period January 1, 1969, through December 31, 1969; or

(B) 200 per centum of the avoidable loss of the intercity rail passenger service operated by the railroad during the period January 1, 1969, through December 31, 1969, covering all intercity service over the routes between those points between which the Secretary, under sections 201 and 202 of title II of this Act, has specified that intercity passenger trains shall be operated within the basic system.

If the amount owed the Corporation under either of these alternatives is agreed by the parties to be less than the amount paid pursuant to paragraph (2), the Corporation shall pay the difference to the railroad and the railroad shall surrender to the Corporation an amount of stock, at par value, equivalent to such payment. If the railroad and the Corporation are unable to agree as to the amount owed, the matter shall be referred to the Interstate Commerce Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, or within such additional time as the Commission may order not to exceed an aggregate of one hundred and eighty days following such date of referral, and its decision shall be binding on both parties.

(4) The payments to the Corporation shall be made in accordance with a schedule to be agreed upon between the parties. Unless the parties otherwise agree, the payments for each of the first 12 months following the date on which the Corporation assumes any of the operational responsibilities of the railroad shall be in cash and not less than one thirty-sixth of the amount owed.

(b) On May 1, 1971, the Corporation shall begin the provision of intercity rail passenger service between points within the basic system unless such service is being provided (i) either by a railroad with which it has not entered into a contract under subsection (a) of this section or (ii) by a regional transportation agency, provided such agency gives satisfactory assurance to the Corporation of the agency's financial and operating capability to provide such service, and of its willingness to cooperate with the Corporation and with other regional transportation agencies on matters of through train service, through car service, and connecting train service. The Corporation may at any time subsequent to May 1, 1971, contract with a regional transportation agency to provide intercity rail passenger service between points within the basic system included within the service of such agency.

(c) Except as provided in section 305(b) of this Act concerning auto-ferry service, no railroad or any other person may, without the consent of the Corporation, conduct intercity rail passenger service over any route over which the Corporation is performing scheduled intercity rail passenger service pursuant to a contract under this section.

SEC. 402. FACILITY AND SERVICE AGREEMENTS.

(a) The Corporation may contract with railroads or with regional transportation agencies for the use of tracks and other facilities and the provision of services on such terms and conditions as the parties may agree. In the event of a failure to agree, the Interstate Commerce Commission shall, within ninety days after application by the Corporation, if it finds that doing so is necessary to carry out the purposes of this Act, order the provision of services or the use of tracks or facilities of the railroad by the Corporation, on such terms and for such compensation as the Commission may fix as just and reasonable, and the rights of the Corporation to such services or to the use of tracks or facilities of the railroad or agency under such order or under an order issued under subsection (b) of this section shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission. In fixing just and reasonable compensation for the provision of services ordered by the Commission under the preceding sentence, the Commission shall, in fixing compensation in excess of incremental costs, consider quality of service as a major factor in determining the amount (if any) of such compensation. If the amount of compensation fixed is not duly and promptly paid, the railroad or agency entitled thereto may bring an action against the Corporation to recover the amount properly owed. Notwithstanding any other provision of this Act, the Corporation may enter into agreements with any other railroads and with any State (or local or regional transportation agency) responsible for providing commuter rail or rail freight services over tracks, rights-of-way, and other facilities acquired by the Corporation pursuant to authority granted by the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976. In the event of a failure to agree, the Commission shall order that rail services continue to be provided, and it shall, consistent with equitable and fair compensation principles, decide, within 180 days after the date of submission of a dispute to the Commission, the proper amount of compensation for the provision of such services. The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization among intercity, commuter, and rail freight services.

(b) To facilitate the initiation of operations by the Corporation within the basic system, the Commission shall, upon application by the Corporation, require a railroad to make immediately available tracks and other facilities. The Commission shall thereafter promptly proceed to fix such terms and conditions as are just and reasonable.

(c) To facilitate such operations by the Corporation as may be deemed by it to be necessary in an emergency, the Commission shall, upon application by the Corporation, require a railroad to make immediately available tracks and other facilities for the duration of such emergency. The Commission shall thereafter promptly proceed

to fix such terms and conditions as are just and reasonable including indemnification of the railroad by the Corporation against any casualty risk to which it may be exposed.

(d)(1) If the Corporation and a railroad are unable to agree upon terms for the sale to the Corporation of property, including interests in property, owned by the railroad and required for intercity rail passenger service, the Corporation may apply to the Commission for an order establishing the need of the Corporation for the property at issue and requiring the conveyance thereof from the railroad to the Corporation on reasonable terms and conditions, including just compensation. Unless the Commission finds that—

(A) conveyance of the property to the Corporation would significantly impair the ability of the railroad to carry out its obligations as a common carrier; and

(B) the obligations of the Corporation to provide modern, efficient, and economical rail passenger service can adequately be met by the acquisition of alternative property, including interests in property, which is available for sale on reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 305(d) of this Act;

the need of the Corporation for the property shall be deemed to be established and the Commission shall order the conveyance of the property to the Corporation on such reasonable terms and conditions as it may prescribe, including just compensation.

(2) The Commission shall expedite proceedings under this subsection and, in any event, issue its order within one hundred and twenty days from receipt of the application from the Corporation. If just compensation has not been determined on the date of the order, the order shall require, as part of just compensation, interest at the rate of 6 per centum per annum from the date prescribed for conveyance until just compensation is paid.

(e)(1) Except in an emergency, intercity passenger trains operated by or on behalf of the Corporation shall be accorded preference over freight trains in the use of any given line of track, junction, or crossing, unless the Secretary has issued an order to the contrary in accordance with paragraph (2) of this subsection.

(2) Any railroad whose rights with regard to freight train operation are affected by paragraph (1) of this subsection may file an application with the Secretary requesting appropriate relief. If, after hearing under section 553 of title 5 of the United States Code, the Secretary finds that adherence to such paragraph (1) will materially lessen the quality of freight service provided to shippers, the Secretary shall issue an order fixing rights of trains, on such terms and conditions as are just and reasonable.

(f) If, upon request of the Corporation, a railroad refuses to permit accelerated speeds by trains operated by or on behalf of the Corporation, the Corporation may apply to the Secretary for an order requiring the railroad to permit such accelerated speeds. The Secretary shall make findings as to whether such accelerated speeds are unsafe or otherwise impracticable, and with respect to the nature and extent of improvements to track, signal systems, and other facilities that would be required to make such accelerated speeds safe and practicable. After hearing, the Secretary shall issue an order fixing maximum permissible speeds of Corporation trains, on such terms and conditions as he shall find to be just and reasonable.

SEC. 403. NEW SERVICE.

(a) The Corporation may provide intercity rail passenger service in excess of that prescribed for the basic system, either within or outside the basic system, where the Corporation, based on its own or available marketing studies or other similar reports or information, determines that experimental or expanded service would be justified, if consistent with prudent management. In determining the establishment of the additional routes, the Corporation shall take into account the current and the estimated future population and economic conditions of the points to be served, the adequacy of alternative modes of transportation available to those points, and the cost of adding the service. The Corporation shall cooperate with State, regional, and local agencies to encourage the use of trains established under this subsection and shall make reasonable efforts to assure high quality of customer services. Any intercity rail passenger service provided under this subsection for a continuous period of two years shall be designated by the Secretary as a part of the basic system.

(b)(1) Any State, regional, or local agency may request of the Corporation rail passenger service beyond that included within the basic system. The Corporation shall institute such service under an agreement if the State, regional, or local agency agrees to reimburse the Corporation for 50 percent of solely related costs and associated capital costs of such service if service can be provided with the resources available to the Corporation and if it is consistent with the following requirements:

(A) The State or agency must make an adequate assurance to the Corporation that it has sufficient resources to meet its share of the costs of such service for the period such service is to be provided under this section.

(B) The State or agency has conducted a market analysis acceptable to the Corporation to insure that there is adequate demand to warrant such service.

An agreement made pursuant to this section may by mutual agreement be renewed for one or more additional terms of not more than 2 years. Any deviations which are likely to have a significant effect on the scheduling, marketing, or operations of the service provided pursuant to this section shall be made by contract or other agreement between the Corporation and the State or agency which is obligated to reimburse the Corporation for all or part of the operating loss, and associated capital costs, of such service.

(2) If more than one application is made for service and all applications are consistent with the requirements of this subsection, but all the services applied for cannot be provided with the available resources of the Corporation, the Board of Directors shall decide in its discretion which application or applications best serve the public interest and can be provided with the available resources of the Corporation, except that a proposal for State support of a service deleted from the basic system shall be given preference.

(3) The Board of Directors shall establish the basis for determining the solely related costs and associated capital costs and the total revenue of the service provided pursuant to this subsection. The Corporation, at the request of States, may conduct studies during the

fiscal year ending June 30, 1976, to determine benefits of seasonal routes to recreational areas.

(c) The Corporation shall initiate not less than one experimental route each year, such route to be designated by the Board of Directors, and shall operate such route for not less than two years. After such two-year period, the Secretary, in consultation with the Board of Directors, shall terminate such route if he finds that it has attracted insufficient patronage to serve the public convenience and necessity, or he may designate such route as a part of the basic system. In carrying out the provisions of this subsection, the Board of Directors shall give priority to experimental routes designed to extend intercity rail passenger service to the major population area of each of the contiguous 48 States which does not have such service to any large population area designated as part of the basic system. After January 1, 1977, all route additions shall be in accordance with the Criteria and Procedures for Making Route and Service Decisions approved by the Congress pursuant to section 404(c)(3), and this subsection shall no longer apply to route additions.

SEC. 404. DISCONTINUANCE OF SERVICE.

(a) Unless it has entered into a contract with the Corporation pursuant to section 401(a)(1) of this Act, no railroad may discontinue any intercity passenger train whatsoever prior to January 1, 1975, the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, a Federal or State court, agency, or authority to the contrary notwithstanding. On and after January 1, 1975, passenger train service operated by such railroad may be discontinued under the provisions of section 13a of the Interstate Commerce Act. Upon filing of a notice of discontinuance by such railroad, the Corporation may undertake to initiate passenger train operations between the points served.

(b)(1) The Corporation must provide the service included within the basic system until October 1, 1976, to the extent it has assumed responsibility for such service by contract with a railroad pursuant to section 401 of this Act.

(2) Except as otherwise provided in this paragraph and in section 403(a) of this Act, service beyond that prescribed for the basic system undertaken by the Corporation upon its own initiative may be discontinued at any time. No such service undertaken by the Corporation on or after January 1, 1973, shall be discontinued until March 1, 1977.

(3) If at any time after October 1, 1976, the Corporation determines that any train or trains in the basic system in whole or in part are not required by public convenience and necessity, or will impair the ability of the Corporation to adequately provide other services such train or trains may be discontinued under the procedures of section 13a of the Interstate Commerce Act (49 U.S.C. 13a): *Provided, however*, That at least thirty days prior to any change or discontinuance, in whole or in part, of any service under this subsection, the Corporation shall mail to the Governor of each State in which the train in question is operated, and post in every station, depot, or other facility served thereby notice of the proposed change or discontinuance. The Corporation may not change or discontinue this

service if prior to the end of the thirty-day notice period, State, regional, or local agencies request continuation of the service and within ninety days agree to reimburse the Corporation for a reasonable portion of any losses associated with the continuation of service beyond the notice period.

(4) For purposes of paragraph (3) of this subsection, the reasonable portion of such losses to be assumed by the State, regional, or local agency shall be equal to 50 percent of the total operating losses and associated capital costs of such service. If the Corporation and the State, regional, or local agencies are unable to agree upon a reasonable apportionment of such losses, the matter shall be referred to the Secretary for decision. In deciding this issue the Secretary shall take into account the purposes of this Act and the impact of requiring the Corporation to bear such losses upon its ability to provide improved service within the basic system.

(c)(1) Within 120 days after the date of the enactment of this subsection, the board of directors of the Corporation shall study, develop, and submit to the Secretary, to the Commission, and to the Congress an initial proposal setting forth criteria and procedures under which the Corporation would be authorized to add or discontinue routes and services. Such criteria and procedures shall include, but need not be limited to—

(A) methods for evaluating the economic and environmental impact of any addition or discontinuance of intercity rail passenger service including an evaluation of the economic impact to the Corporation and to the nation of the addition of new service points along existing or new inter-city routes within the Northeast Corridor;

(B) methods for evaluating the effects of any such addition or discontinuance on connecting parts of the national system of intercity rail passenger service;

(C) methods for estimating with respect to any such addition or discontinuance, the population to be affected, the demand for intercity rail passenger service, the revenue per passenger mile, and the effect on capital costs and revenue of the Corporation;

(D) methods for evaluating the availability of alternative modes of transportation;

(E) methods for giving public notice of, and obtaining public comments on, any such addition or discontinuance; and

(F) methods for establishing a priority ranking system for routes and trains to meet the needs of the public convenience and necessity for a balanced transportation system, taking into consideration the criteria and procedures referred to in subparagraphs (A) through (E) of this paragraph, together with such other criteria as the board of directors deems appropriate.

(2) Within 150 days after the date of enactment of this subsection, the Secretary and the Commission shall submit to the Congress and to the board of directors of the Corporation their comments on the initial proposal setting forth criteria and procedures developed by the board of directors of the Corporation, together with such recommendations as they may deem appropriate.

(3) Within 30 days after receipt of comments submitted by the Secretary and the Commission under paragraph (2) of this subsection, the

board of directors of the Corporation shall consider such comments and shall submit to the Congress a final proposal setting forth criteria and procedures under which the Corporation would be authorized to add or discontinue routes and services within the national system of intercity rail passenger service. The criteria and procedures set forth in such final proposal shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of its submission, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such final proposal. If no resolution is adopted as provided in the preceding sentence, the Corporation may add or discontinue routes and services in accordance with the criteria and procedures set forth in the final proposal, notwithstanding the provisions of section 13a of the Interstate Commerce Act or of section 404(b)(3) of this Act, relating to discontinuance of service within the basic system. Service beyond the basic system referred to in section 404(b)(2) of this Act shall not be discontinued under this subsection until March 1, 1977. For purposes of this paragraph, continuity of session of the Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded from the computation of the 60-day period.

SEC. 405. PROTECTIVE ARRANGEMENTS FOR EMPLOYEES.

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service whether occurring before, on, or after January 1, 1975. A "discontinuance of intercity rail passenger service" shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 305 and 402 of this Act pursuant to any modification or termination thereof or an assumption of operations by the Corporation.

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act. Any contract entered into pursuant to the provisions of this title shall specify the terms and conditions of such protective arrangements. No contract under section 401(a)(1) of this act between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

(c) Upon commencement of operations in the basic system, the substantive requirements of subsections (a) and (b) of this section

shall apply to the Corporation and its employees in order to insure the maintenance of the protective arrangements specified in such subsections, except that nothing in this subsection shall be construed to impose upon the Corporation any obligation of a railroad with respect to any right, privilege, or benefit earned by any employee as a result of prior service performed for such railroad. The Secretary of Labor shall certify that affected employees of the Corporation have been provided fair and equitable protection as required by this section within one hundred and eighty days after assumption of operations by the Corporation.

(d) The Corporation shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

(e) The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service upon the date of enactment of this Act and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

(f) The Corporation shall take such action as may be necessary to assure that, to the maximum extent practicable, any railroad employee eligible to receive free or reduced-rate transportation by railroad on April 30, 1971, under the terms of any policy or agreement in effect on such date will be eligible to receive, provided space is available, free or reduced-rate transportation on any intercity rail passenger service provided by the Corporation under this Act, on terms similar to those available on such date to such railroad employee under such policy or agreement. However, the Corporation may apply to all railroad employees eligible to receive free or reduced-rate transportation under such policies or agreements, a single systemwide schedule of terms determined by the Corporation to reflect terms applicable to the majority of such employees under those policies or agreements in effect on April 30, 1971. The Corporation shall be reimbursed by the railroads by way of payment or offset for such costs as may be incurred in providing transportation services to railroad employees under any policy or agreement referred to in the first sentence of this subsection, including the costs of implementing and administering this section. Within ninety days after the enactment of this sentence, each railroad

shall enter into an agreement with the Corporation for the payment of such expenses. If the Corporation and a railroad are unable to agree as to the amount of any payment owed by the railroad under this subsection, the matter shall be referred to the Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, and its decision shall be binding on both parties. If any railroad company which operates intercity passenger service not under contract with the Corporation notifies the Corporation and railroads which have entered into the agreement specified above that it will accept the terms of the systemwide schedule of terms and the compensation specified in the agreements, such railroad company shall be reimbursed for services to railroad employees in accordance with the agreements. As used in this subsection, the term "railroad employee" means (1) an active full-time employee, including any such employee during a period of furlough or while on leave of absence, of a railroad, or terminal company, (2) a retired employee of a railroad or terminal company, and (3) the dependents of any employee referred to in clause (1) or (2) of this sentence.

TITLE VI²—FEDERAL FINANCIAL ASSISTANCE

SEC. 601. AUTHORIZATION FOR APPROPRIATIONS.

(a)(1) There are authorized to be appropriated to the Secretary for the benefit of the Corporation in fiscal year 1971, \$40 million, and in subsequent fiscal years through June 30, 1975, a total of \$597,300,000. There are authorized to be appropriated to the Secretary for the benefit of the Corporation—

(1) for the payment of operating expenses for the basic system, except for the additional expenses that are to be paid from funds authorized by clause (3) of this sentence, and for operating and capital expenses of rail passenger service provided pursuant to section 403(b) of this Act, not to exceed \$350,000,000 for the fiscal year ending June 30, 1976, not to exceed \$105,000,000 for the transitional fiscal period ending September 30, 1976, not to exceed \$430,000,000 for the fiscal year ending September 30, 1977, and not to exceed \$470,000,000 for the fiscal year ending September 30, 1978;

(2) for the payment of the costs of capital acquisitions or improvements of the basic system, not to exceed \$110,000,000 for the fiscal year ending June 30, 1976, not to exceed \$25,000,000 for the transitional fiscal period ending September 30, 1976, not to exceed \$130,000,000 for the fiscal year ending September 30, 1977, and not to exceed \$130,000,000 for the fiscal year ending September 30, 1978;

(3) for the payment of the additional operating expenses of the Corporation which result from the operation, maintenance, and ownership or control of the Northeast Corridor, pursuant to title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 851 et seq.), not to exceed a total amount of \$68,000,000 for the transitional fiscal period ending Septem-

² Title V of the Rail Passenger Service Act, relating to the establishment of a financial investment advisory panel, was deleted by the Amtrak Improvement Act of 1975 (Public Law 94-25).

ber 30, 1976, and the fiscal year ending September 30, 1977, and not to exceed \$75,000,000 for the fiscal year ending September 30, 1978; and

(4) for the payment of the principal amount of obligations (other than leases) of the Corporation which are guaranteed by the Secretary pursuant to section 602 of this Act, not to exceed \$25,000,000 for the fiscal year ending September 30, 1978.

Not more than \$25,000,000 of the amounts authorized by clause (1) of the preceding sentence for the fiscal year ending June 30, 1976; not more than \$7,000,000 of the amounts so authorized for the transitional fiscal period ending September 30, 1976, not more than \$35,000,000 of the amounts so authorized for the fiscal year ending September 30, 1977, and not more than \$40,000,000 of the amounts so authorized for the fiscal year ending September 30, 1978, shall be available for payment of rail passenger service operating and capital expenses, pursuant to section 403(b) of this Act. Funds appropriated pursuant to such authorization shall be made available to the Secretary during the fiscal year for which appropriated and shall remain available until expended. Such sums shall be paid by the Secretary to the Corporation for expenditure by it in accordance with spending plans approved by Congress at the time of appropriation and general guidelines established annually by the Secretary. Payments by the Secretary to the Corporation of appropriated funds shall be made no more frequently than every 90 days, unless the Corporation, for good cause, requests more frequent payment before the expiration of any 90-day period.

(2) Funds appropriated for capital grants pursuant to this section (other than subsection (a)(4)) shall be paid to the Corporation in each fiscal quarter, and such grants may be used by the Corporation for temporary reduction of outstanding loan balances, including loans guaranteed by the Secretary pursuant to section 602 of this Act.

(b)(1) Whenever the Corporation submits any budget estimate or request to the President, the Department of Transportation, or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Corporation submits any legislative recommendation, proposed testimony, or comments on legislation to the President, the Department of Transportation, or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Corporation to submit its legislative recommendations, proposed testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

SEC. 602. GUARANTEE OF LOANS.

(a) The Secretary is authorized, on such terms and conditions as he may prescribe, and with the approval of the Secretary of the Treasury, to guarantee any lender or lessor against loss of principal and interest or other contractual commitments, including rentals, on securities, obligations, leases or loans (including refinancing thereof) issued to finance the upgrading of roadbeds, and the purchase or lease by the Corporation or an agency of new rolling stock, rehabilitation of exist-

ing rolling stock, reservation systems, switch and signal systems, and other capital equipment and facilities, necessary for the improvement of rail passenger service. The maturity date or term of such securities, obligations, leases, or loans, including all extensions and renewals thereof, shall not be later than 20 years from their date of issuance.

(b) All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America.

(c) Any guarantee made by the Secretary under this section shall not be terminated, canceled or otherwise revoked; shall be conclusive evidence that such guarantee complies fully with the provisions of this Act and of the approval and legality of the principal amount, interest rate, lease rate, and all other terms of the securities, obligations, leases, or loans and of the guarantee, and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, lease, or loan, except for fraud or material misrepresentation on the part of such holder.

(d) The aggregate unpaid principal amount of securities, obligations, leases, or loans outstanding at any one time, which are guaranteed by the Secretary under this section, may not exceed \$900 million. Such \$900,000,000 maximum shall be reduced by an amount equal to the total principal amount of such securities, obligations, or loans paid by the Corporation from funds made available pursuant to clause (4) of section 601(a) of this Act. The Secretary shall prescribe and collect a reasonable annual guaranty fee.

(e) There are authorized to be appropriated to the Secretary such amounts, to remain available until expended, as are necessary to discharge all his responsibilities under this section.

(f) If at any time the moneys available to the Secretary are insufficient to enable him to discharge his responsibilities under guarantees issued by him under subsection (a) of this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations available under subsection (e) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations as acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(g) Notwithstanding any other provision of this Act, a guarantee may not be made of any security, obligation, lease, or loan, if the nature of such security, obligation, lease, or loan is such that the income therefrom is not includable in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.

(h) The Secretary shall, within 180 days after the date of enactment of this subsection, issue general guidelines designed to assist the Corporation in the formulation of capital and budgetary plans.

(i) Any request made by the Corporation for the guarantee of a lease or loan pursuant to this section, which has been approved by the Board of Directors of the Corporation, shall be approved by the Secretary if, in the discretion of the Secretary, such request falls within the approved capital and budgetary guidelines issued under subsection (h).

TITLE VII—INTERIM EMERGENCY FEDERAL FINANCIAL ASSISTANCE

SEC. 701. INTERIM AUTHORITY TO PROVIDE EMERGENCY FINANCIAL ASSISTANCE FOR RAILROADS OPERATING PASSENGER SERVICE.

(a) For the purpose of permitting a railroad to enter into or carry out a contract entered into under this Act, the Secretary is authorized, on such terms and conditions as he may prescribe, to (1) make loans to such railroad, or (2) guarantee any lender against loss of principal or interest on any loan to such railroad.

(b) Before making a loan or a guarantee under this section, the Secretary must find, in writing, that—

(1) the loan or guarantee is necessary to carry out the provisions of this Act;

(2) the proceeds of any loan made or guaranteed under this Act will be used solely to carry out contracts entered into under this Act;

(3) the loan or guarantee is not otherwise available on reasonable terms and conditions; and

(4) there is reasonable assurance that the business affairs of the railroad will be conducted in a prudent manner.

(c)(1) In any case in which there is a liquidation of the assets of any railroad which is the recipient of a loan made or guaranteed under this Act, the United States shall have the first right to redeem that portion of such assets consisting of those rights-of-way, tracks, and other facilities designated by the Secretary to be necessary for the purpose of providing intercity rail passenger service, including services employing innovative technology, within the basic system. In the case of a railroad in reorganization (as defined in section 102(12) of the Regional Rail Reorganization Act of 1973) which has an agreement with the Corporation to provide intercity rail passenger service on the date of enactment of this sentence, the sale by such railroad of any right-of-way or track over which the Corporation is required to provide intercity rail passenger service on such date of enactment (as an experimental route designated by the Secretary before such date of enactment) shall be deemed to be a liquidation of the assets of such railroad under the first sentence of this paragraph, and the Secretary

shall acquire such right, title, and interest in such right-of-way or track, and restore it to such condition, as may be necessary to permit the Corporation to provide intercity rail passenger service over the designated route.

(2) It is the intent of the Congress that, in the case of a loan guarantee under this Act, the United States shall stand in the same position with respect to other creditors as in the case of a direct loan by the United States giving the United States priority over secured and unsecured creditors.

(d) Interest on loans made under this section shall be at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of such loans adjusted to the nearest one-eighth of one per centum.

(e) The maturity date on any loan made or guaranteed under this section, including renewals and extensions thereof, shall not be later than 5 years from the date of issuance.

(f) The aggregate amount of loans and loan guarantees made under this section shall not exceed \$200,000,000.

SEC. 702. AUTHORIZATION FOR APPROPRIATIONS.

There are hereby authorized to be appropriated such amounts not to exceed \$200,000,000 as may be necessary to carry out the purposes of this title. Any sums appropriated shall be available until expended.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. ADEQUACY OF SERVICE.

(a) The Commission shall promulgate, within 60 days from the date of enactment of the Amtrak Improvement Act of 1973, and shall from time to time revise, such regulations as it considers necessary to provide adequate service, equipment, tracks, and other facilities for quality intercity rail passenger service. No regulation issued by the Commission under this section shall require the Corporation or any railroad providing intercity rail passenger service to provide food service other than during customary dining hours. The Corporation may contract with railroads or with regional transportation agencies for the improvement of service, equipment, tracks and other facilities necessary to meet such regulations promulgated by the Commission. In the event of a failure to agree, the Commission shall by rule establish procedures for allocating between the Corporation and a railroad any costs required to be incurred to meet the regulations establishing adequate service, equipment, tracks, and other facilities.

(b) A civil action may be brought by the Commission to enforce any provision of subsection (a) of this section. The Department of Justice shall represent the Commission in all court proceedings pursuant to this subsection, except that in any case in which the Commission seeks to challenge action or inaction on the part of any party which the Department of Justice is representing, the Commission may be represented by its own attorneys. Unless the Attorney General notifies the Commission within 45 days of a request for representation that he will represent the Commission, such representation may be made by attorney designated by the Commission. Any action to

enforce the provisions of subsection (a) may be maintained in the district court of the United States for any district in which a defendant is found, resides, transacts business, or maintains an agent for service of process. All process in any such suit may be served in any judicial district in which the person to be served is an inhabitant or in which he may be found.

SEC. 802. EFFECT ON PENDING PROCEEDINGS.

Upon enactment of this Act, no railroad may discontinue any inter-city rail passenger service whatsoever other than in accordance with the provisions of this Act, notwithstanding the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any Federal or State court, agency, or authority.

SEC. 803. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 804. ACCOUNTABILITY.

Section 201 of the Government Corporation Control Act (31 U.S.C. 856) is amended by striking out "and" immediately preceding "(5)" and by inserting immediately before the period at the end thereof the following: "and (6) the National Railroad Passenger Corporation."

SEC. 805. RECORDS AND AUDIT OF THE CORPORATION AND CERTAIN RAILROADS.

(1)(A) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audit shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person conducting the audit; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person.

(B) The report of each such independent audit shall be included in the annual report required by section 308(a) of this Act. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor's opinion of those statements.

(2)(A) The Comptroller General of the United States shall conduct annually a performance audit of the activities and transactions of the Corporation in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate.

The representative of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Corporation pertaining to its financial and other transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation.

(B) To the extent the Comptroller General deems necessary in connection with audits as he may make of the financial transactions of the Corporation pursuant to paragraph (A) of this subsection, his representatives shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any railroad with which the Corporation has entered into a contract for the performance of intercity rail passenger service, pertaining to such railroad's financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of such railroad shall remain in the possession and custody of the railroad.

(C) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress.

SEC. 806. REPORT BY SECRETARY OF TRANSPORTATION.

(a) The Secretary shall, on or before March 15, 1973, transmit to the Congress a comprehensive report on the effectiveness of this Act in achieving and promoting intercity rail passenger service and on the effectiveness of the Corporation in implementing the purposes of this Act. Such report shall include an evaluation by the Secretary of the intercity rail passenger service operations assumed by the Corporation including, but not limited to, adequacy and effectiveness of services, on-time performance, reservations and ticketing, scheduling, equipment, fare structures, routes, and immediate and long-term financial needs.

(b) In addition to the general evaluation and assessment required under subsection (a) of this section, the report by the Secretary shall include—

(1) recommendations for the orderly assumption by the Corporation of the operation and control of all aspects of its intercity rail passenger service, including the performance by the Corporation of all full-time functions solely related to the intercity rail passenger service provided by it under this Act;

(2) an assessment of whether the board of directors of the Corporation adequately and fairly represents the members of the public who utilize intercity rail passenger services and, if necessary, recommendations for appropriate changes in the composition of such board of directors;

(3) estimates of potential revenues for the Corporation from the transportation of mail and express on intercity passenger trains;

(4) a detailed analysis of the on-time performance of intercity rail passenger service operations assumed by the Corporation, together with such recommendations as the Secretary may deem advisable to eliminate delays in such intercity rail passenger service operations caused by freight train operations;

(5) recommendations with respect to the establishment of the optimum intercity rail passenger service system as soon as possible after July 1, 1973, taking into account economic feasibility, requirements as to public convenience and necessity, and the ability of the Corporation to provide adequate service over the total system, which optimum system shall include recommended routes and discontinuances; and

(6) recommendations with respect to the improvement of tracks and roadbeds on routes over which the Corporation operates intercity passenger trains.

(c) Such report shall contain such additional recommendations as the Secretary may deem advisable to assist the Corporation in carrying out the purposes of this Act, including recommendations for legislative enactments or administrative actions which would enable the Corporation, after July 1, 1973, to discontinue more rapidly and efficiently those routes which do not meet the criteria recommended by the Secretary for the establishment of the optimum intercity rail passenger service system.

(d) In carrying out the provisions of this section, the Secretary may use available services and facilities of other departments, agencies, and instrumentalities of the Federal Government with their consent and on a reimbursable basis.

(e) Departments, agencies, and instrumentalities of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the provisions of this section.

TITLE IX—TAX DEDUCTION FOR CERTAIN PAYMENTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

SEC. 901. (a) Part VIII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to special deductions for corporations) is amended by adding at the end thereof the following new section:

“SEC. 250. CERTAIN PAYMENTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION.

“(a) GENERAL RULE.—If—

“(1) any corporation which is a common carrier by railroad (as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))) makes a payment in cash, rail passenger equipment

or services to the National Railroad Passenger Corporation (hereinafter in this section referred to as the 'Passenger Corporation') pursuant to a contract entered into under section 401(a) of the Rail Passenger Service Act of 1970, and

"(2) no stock in the Passenger Corporation is issued at any time to such corporation in connection with any contract entered into under such section 401(a),

then the amount of such payment shall (subject to subsection (c)) be allowed as a deduction for the taxable year in which it is made.

"(b) WHEN PAYMENT IS MADE.—Under regulations prescribed by the Secretary or his delegate, a payment in rail passenger equipment shall be treated as made when title to the equipment is transferred, and a payment in services shall be treated as made when the services are rendered.

"(c) EFFECT OF CERTAIN SUBSEQUENT ACQUISITIONS OF STOCK.—

"(1) DISALLOWANCE OF DEDUCTIONS.—If any deduction has been allowed under subsection (a) to a corporation and such corporation (or a successor corporation) acquires any stock in the Passenger Corporation (other than in a transaction described in section 374 or 381) before the close of the 36-month period which begins with the day on which the last payment is made to the Passenger Corporation pursuant to the contract entered into under such section 401(a), then such deduction shall be disallowed (as of the close of the taxable year for which it was allowed under subsection (a)).

"(2) COLLECTION OF DEFICIENCY.—If any deduction is disallowed by reason of paragraph (1), then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such a disallowance, include one year following the date on which the person acquiring the stock which results in the disallowance (in accordance with regulations prescribed by the Secretary or his delegate) notifies the Secretary or his delegate of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

"(d) MEMBERS OF CONTROLLED GROUP.—Under regulations prescribed by the Secretary or his delegate, if a corporation is a member of a controlled group of corporations (within the meaning of section 1563), subsections (a)(2) and (c) shall be applied by treating all members of such controlled group as one corporation."

(b) The table of sections for such part VIII is amended by adding at the end thereof the following:

"Sec. 250. Certain payments to the National Railroad Passenger Corporation."

(c) The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.



FEDERAL RAILROAD SAFETY ACT OF 1970

FEDERAL RAILROAD SAFETY ACT OF 1970

(as amended through 1976)

TITLE II—RAILROAD SAFETY¹

SEC. 201. SHORT TITLE.

This title may be cited as the "Federal Railroad Safety Act of 1970".

SEC. 202. RAIL SAFETY REGULATIONS.

(a) The Secretary of Transportation (hereafter in this title referred to as the "Secretary") shall (1) prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety supplementing provisions of law and regulations in effect on the date of enactment of this title, and (2) conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety. However, nothing in this title shall prohibit the bargaining representatives of common carriers and their employees from entering into collective bargaining agreements under the Railway Labor Act, including agreements relating to qualifications of employees, which are not inconsistent with rules, regulations, orders, or standards prescribed by the Secretary under this title. Nothing in this title shall be construed to give the Secretary authority to issue rules, regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

(b) Hearings shall be conducted in accordance with the provisions of section 553 of title 5 of the United States Code for all rules, regulations, orders, or standards issued by the Secretary including those establishing, amending, revoking, or waiving compliance with a railroad safety rule, regulation, order, or standard under this title, and an opportunity shall be provided for oral presentations.

(c) The Secretary may, after hearing in accordance with subsection (b) of this section, waive in whole or in part compliance with any rule, regulation, order, or standard established under this title, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

(d) In prescribing rules, regulations, orders, and standards under this section, the Secretary shall consider relevant existing safety data and standards and shall, within 180 days after the date of enactment of the Federal Railroad Safety Authorization Act of 1976, take such action as may be necessary to develop and publish rules of practice applicable to all proceedings under this Act. Such rules of practice shall take into consideration the varying nature of proceedings under

¹ The Federal Railroad Safety Act of 1970 was enacted as title II of the Act entitled "An Act to provide for Federal railroad safety, hazardous materials control, and for other purposes", approved Oct. 16, 1970 (Public Law 91-458; 84 Stat. 971).

this Act and shall include specific time limits upon the disposition of all proceedings initiated under this Act. In no event shall the time limit for any such proceeding extend for more than 12 months after the date such proceeding is initiated.

(e) The Secretary shall issue initial railroad safety rules, regulations, orders, and standards under this title based upon existing safety data and standards, not later than one year after the date of enactment of this title. The Secretary shall review and, after hearing in accordance with subsection (b) of this section, revise such rules, regulations, orders, and standards as necessary.

(f) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5 of the United States Code.

(g) The Secretary shall, within 180 days after the date of enactment of this subsection, issue such rules, regulations, orders, and standards as may be necessary to require that—

(1) in any case in which activities of railroad employees (other than train or yard crews) assigned to inspect, test, repair, or service rolling equipment require such employees to work on, under, or between such equipment, each manually operated switch, including any crossover switch, providing access to the track on which such equipment is located must be lined against movement to that track and secured by an effective locking device which may not be removed except by the class or craft of employees performing such inspection, testing, repair, or servicing;

(2) the rear car of all passenger and commuter trains shall have one or more highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility; and

(3) the rear car of all freight trains shall have highly visible markers during periods of darkness or whenever weather conditions restrict clear visibility.

Notwithstanding the provisions of section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), nothing in paragraphs (2) and (3) of this subsection shall prohibit a State from continuing in force any law, rule, regulation, order or standard in effect on the date of enactment of the Federal Railroad Safety Authorization Act of 1976 relating to lighted markers on the rear car of freight trains except to the extent that such law, rule, regulation, order, or standard would cause such cars to be in violation of this section.

SEC. 203. EMERGENCY POWERS.

If through testing, inspection, investigation, or research carried out pursuant to this title, the Secretary determines that any facility or piece of equipment is in unsafe condition and thereby creates an emergency situation involving a hazard of death or injury to persons affected by it, the Secretary may immediately issue an order, without regard to the provisions of section 202(b) of this title, prohibiting the further use of such facility or equipment until the unsafe condition is corrected. Subsequent to the issuance of such order, opportunity for review shall be provided in accordance with section 554 of title 5 of the United States Code.

SEC. 204. GRADE CROSSINGS AND RAILROAD RIGHTS-OF-WAY.

(a) The Secretary shall submit to the President for transmittal to the Congress, within one year after the date of enactment of this title, a comprehensive study of the problem of eliminating and protecting railroad grade crossings, including a study of measures to protect pedestrians in densely populated areas along railroad rights-of-way, together with his recommendations for appropriate action including, if relevant, a recommendation for equitable allocation of the economic costs of any program proposed as a result of such study.

(b) In addition the Secretary shall, insofar as practicable, under the authority provided by this title and pursuant to his authority over highway, traffic, and motor vehicle safety, and highway construction, undertake a coordinated effort toward the objective of developing and implementing solutions to the grade crossing problem, as well as measures to protect pedestrians in densely populated areas along railroad rights-of-way.

SEC. 205. STATE REGULATION.

The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

SEC. 206. STATE PARTICIPATION.

(a) A State may participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order, or standard prescribed by the Secretary under this title if the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within such State are regulated by a State agency and such State agency submits to the Secretary an annual certification that such State agency—

(1) has regulatory jurisdiction over the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within the State concerned;

(2) has been furnished a copy of each Federal safety rule, regulation, order, and standard, applicable to any such railroad facility, equipment, rolling stock, or operation, established under this title as of the date of the certification;

(3) is conducting the investigative and surveillance activities prescribed by the Secretary as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary.

The Secretary shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by section 207 of this title) to request injunctive relief for the violation of rules, regula-

tions, orders, and standards prescribed by the Secretary under section 202(a) of this title and to recommend appropriate action as provided by sections 209 and 210 of this title.

(b) Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing—

(1) the name and address of each railroad subject to the safety jurisdiction of the State agency;

(2) all accidents or incidents reported during the preceding twelve months by each such railroad involving personal injury requiring hospitalization, fatality, or property damage exceeding \$750 or such other higher amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding each such accident or incident;

(3) the record maintenance, reporting, and inspection practices conducted by the State agency to aid the Secretary in his enforcement of rules, regulations, orders, and standards prescribed by him under section 202(a) of this title, including a detail of the number of inspections made of rail facilities, equipment, rolling stock, and operations by the State agency during the preceding twelve months; and

(4) such other information as the Secretary may require.

The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily complying with the investigative and surveillance activities prescribed by him with respect to such safety rules, regulations, orders, and standards, he may, on reasonable notice and after opportunity for hearing, reject the certification, in whole or in part, or take such other action as he deems appropriate to achieve adequate enforcement. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily complying with the investigative and surveillance activities prescribed by the Secretary with respect to such safety rules, regulations, orders, and standards.

(c) With respect to any railroad facility, equipment, rolling stock, or operation for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the investigative and surveillance activities prescribed by the Secretary as necessary to obtain compliance with any Federal safety rule, regulation, order, or standard applicable to any such railroad facility, equipment, rolling stock, or operation. An agreement entered into under this subsection, or any provision thereof, may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to provide all or any part of the investigative and surveillance activities to which the agreement relates. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

(d) Upon application by any State agency which has submitted a certification under subsection (a) of this section, or entered into an agreement under subsection (c) of this section, the Secretary shall pay,

out of funds appropriated pursuant to this title or otherwise made available, up to 50 per centum of the cost of the personnel, equipment, and activities of such State agency reasonably required, during the ensuing fiscal year, to carry out a safety program under such certification or agreement. No such payment may be made unless the State agency making application under this subsection given assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for the safety program will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding the date of enactment of this title.

(e) The Secretary is authorized to conduct such monitoring of State investigative and surveillance practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this title.

(f) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, order, or standard for railroads established under this title after the date of such certification until the State agency has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section to provide the necessary inspection and surveillance activities in accordance with the provisions of such subsection.

SEC. 207. ENFORCING COMPLIANCE WITH FEDERAL RAILROAD SAFETY RULES, REGULATIONS, ORDERS, AND STANDARDS.

In any case in which the Secretary has failed to assess the civil penalty applicable under section 209 of this title, or no civil action has been commenced to obtain injunctive relief under section 210 of this title, with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title, within 90 days after the date on which such violation occurred, a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title within the State where the violation occurred, may apply to the district court of the United States within the jurisdiction of which the violation occurred for the enforcement of such rule, regulation, order, or standard. The court shall have jurisdiction to enforce compliance with such rule, regulation, order, or standard by injunction or other proper process to restrain further violation thereof, or to enjoin compliance therewith, or to assess and collect the civil penalty included in or made applicable to such rule, regulation, order, or standard. The provisions of this section shall not apply in any case in which the Secretary has affirmatively determined, in writing, that no violation has occurred.

SEC. 208. GENERAL POWERS.

(a) In carrying out his functions under this title, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluation, and training (particularly with respect to those aspects of railroad safety which he finds to be in need

of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this title. The Secretary is further authorized to issue orders directing compliance with this Act or with any railroad safety rule, regulation, order, or standard issued under this Act; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) The National Transportation Safety Board shall have the authority to determine the cause or probable cause and report the facts, conditions and circumstances relating to accidents investigated under subsection (a) of this section, but may delegate such authority to any office or official of the Board or to any office or official of the Department of Transportation with the approval of the Secretary, as it may determine appropriate.

(c) To carry out the Secretary's and the Board's responsibilities under this title, officers, employees, or agents of the Secretary or the Board, as the case may be, are authorized to enter upon, inspect, and examine rail facilities, equipment, rolling stock, operations, and pertinent records at reasonable times and in a reasonable manner. Such officers, employees, or agents shall display proper credentials when requested.

(d) All orders, rules, regulations, standards, and requirements in force, or prescribed or issued by the Secretary under this title, or by any State agency which is participating in investigative and surveillance activities pursuant to section 206 of this title, shall have the same force and effect as a statute for purposes of the application of sections 3 and 4 of the Act of April 22, 1908 (45 U.S.C. 53 and 54), relating to the liability of common carriers by railroad for injuries to their employees.

SEC. 209. PENALTIES.

(a) It shall be unlawful for any railroad to disobey, disregard, or fail to adhere to any rule, regulation, order, or standard prescribed by the Secretary under this title.

(b) The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this title a civil penalty for violation thereof or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39) in such amount, not less than \$250 nor more than \$2,500, as he deems reasonable.

(c) Any railroad violating any rule, regulation, order, or standard referred to in subsection (b) of this section shall be assessed by the Secretary the civil penalty applicable to the standard violated. Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States having jurisdiction in the locality where such violation occurred. Civil penalties may, however, be compromised by the Secretary for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section, prior to referral to the Attorney General. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person

charged. All penalties collected under this title, including penalties collected pursuant to section 207 of this title, shall be covered into the Treasury as miscellaneous receipts.

(d) In any action brought under this title, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

SEC. 210. INJUNCTIVE RELIEF.

(a) The United States district court shall, at the request of the Secretary and upon petition by the Attorney General on behalf of the United States, or upon application by a State agency pursuant to section 207 of this title, have jurisdiction, subject to the provisions of rules 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title or to enforce rules, regulations, orders, or standards established under this title.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section or under section 207 of this title, which violation also constitutes a violation of this title, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

SEC. 211. ANNUAL REPORT.

(a) The Secretary shall prepare and submit to the President for transmittal to Congress on or before May 1 of each year a comprehensive report on the administration of this title for the preceding calendar year. Such report shall include, but not be restricted to—

(1) a thorough statistical compilation of the accidents and casualties by cause occurring in such year;

(2) a list of Federal railroad safety rules, regulations, orders, and standards issued under this title in effect or established in such year;

(3) a summary of the reasons for each waiver granted under section 202(c) of this title during such year;

(4) an evaluation of the degree of observance of applicable railroad safety rules, regulations, orders, and standards issued under this title;

(5) a summary of outstanding problems confronting the administration of Federal railroad safety rules, regulations, orders, and standards issued under this title in order of priority;

(6) an analysis and evaluation of research and related activities completed (including the policy implications thereof) and technological progress achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions for the enforcement of any Federal railroad safety rule, regulation, order, or standard issued under this title;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies under section 206(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 206(a) of this title which were rejected, in whole or in part, by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of—

(A) agreements entered into with State agencies under section 206(c) of this title which were in effect during the preceding calendar year, and

(B) agreements entered into under section 206(c) of this title which were terminated by the Secretary, in whole or in part, during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to strengthen the national railroad safety program.

(c) **SPECIAL REPORT.**—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

(A) State program development;

(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

(D) annual projections of each State agency's needs for personnel, equipment, and activities, reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs

thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

(E) the sources from which the State expects to draw the funds to finance such programs; and

(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program;

(10) contain a description of the regulations and handling criteria established by the Secretary under the Hazardous Materials Transportation Act specifically applicable to the transportation of radioactive materials by railroad (as of June 30, 1975), together with annual projections of the amounts of radioactive materials reasonably expected to be transported by railroad during each fiscal year from 1976 through 1980 and an evaluation of the need for additional regulations and handling criteria applicable to the transportation of radioactive materials by railroad during each such fiscal year; and

(11) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form.

SEC. 212. AUTHORIZATION FOR APPROPRIATIONS.

(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$35,000,000 for the fiscal year ending September 30, 1977, and not to exceed \$35,000,000 for the fiscal year ending September 30, 1978.

(b) Except as provided in subsection (c) of this section, amounts appropriated under subsection (a) of this section for any fiscal year shall be available for expenditure in such fiscal year as follows:

(1) For the Office of Safety, including salaries and expenses for not more than (A) 500 safety inspectors, (B) 45 signal and train control inspectors, and (C) 110 clerical personnel, not to exceed \$18,000,000 in any fiscal year.

(2) To carry out the provisions of section 206(d) of this Act, relating to State safety programs, not to exceed \$3,500,000 in any fiscal year.

(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed \$3,500,000 in any fiscal year.

(4) For conducting research and development activities under this Act, not to exceed \$10,000,000 in any fiscal year.

(c)(1) The aggregate of the amounts obligated and expended for research and development activities under this Act in any fiscal year shall not exceed the aggregate of the amounts expended for rail inspection and for the investigation and enforcement of railroad safety rules, regulations, orders, and standards under this Act in the same fiscal year. For purposes of this paragraph and paragraph (4) of subsection (b) of this section, amounts made available under paragraph (2) of this subsection for expenditure for research and development activities under this Act in any fiscal year following the fiscal year in which such amounts were originally appropriated shall be considered to have been obligated and expended for such activities during the fiscal year in which such amounts were originally appropriated.

(2) Of amounts appropriated under subsection (a) of this section and available for expenditure for conducting research and development activities under subsection (b)(4) of this section, not to exceed \$5,000,000 of amounts so appropriated and made available for fiscal year 1977, and not to exceed \$7,000,000 of amounts so appropriated and made available for fiscal year 1978, are authorized to remain available until expended for conducting research and development activities under this Act.

RAILWAY LABOR ACT



RAILWAY LABOR ACT

(as amended through 1976)

AN ACT to provide for the prompt disposition of disputes between carriers and their employees and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term “carrier” includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such “carrier”: *Provided, however,* That the term “carrier” shall not include any street, interurban, or suburban electric railway unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term “carrier” shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor, or any of such activities.

Second. The term “Adjustment Board” means the National Railroad Adjustment Board created by this Act.

Third. The term “Mediation Board” means the National Mediation Board created by this Act.

Fourth. The term “commerce” means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points

in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tippie, or the loading of coal at the tippie.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

GENERAL PURPOSES

SEC. 2. (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to

reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense.

It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by any individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance

with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with section 2 hereof and which represent employees in engine, train, yard, or hostling service: *Provided, however,* That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the

First Division: *Provided further, however,* That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted at any place designated by the division: *Provided, however,* That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee," to sit with the division as a member thereof and make an award. Should the division fail to agree upon and

select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of the neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining member of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of \$10,000¹ per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

¹ The salaries of members changed to \$15,000 per annum by Public Law 359, 81st Cong., approved October 15, 1949.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923,² fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, any such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

² Superseded by Classification Act of 1949 (P.L. 429, 21st Cong.) approved October 28, 1949.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

FUNCTIONS OF MEDIATION BOARD

SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgement of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in

those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possessions.

SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representatives as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office

as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

Sec. 8.³ The agreement to arbitrate—

- (a) Shall be in writing;
- (b) Shall stipulate that the arbitration is had under the provisions of this Act;
- (c) Shall state whether the board of arbitration is to consist of three or of six members;
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

³ Section 8 as contained in Railway Labor Act, approved May 20, 1926.

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 8.⁴ If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

⁴ Section 8 as contained in Public Law No. 442, amendment to Railway Labor Act, approved June 21, 1934.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, is amended to read as follows:

Second. To review decisions of the district courts, under section 9 of the Railway Labor Act.

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes", approved February 13, 1925, is amended to read as follows:

SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes", approved September 26, 1914; and under section 11 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply.

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

TITLE II

SECTION 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

SEC. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof.

SEC. 203. The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title in the same manner and to the same extent as are the disputes covered by section 5 of title I of this Act.

SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

SEC. 205. When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed by, its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this Act, to select and designate four representatives who shall constitute a board which shall be known as the National Air Transport Adjustment Board. Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by title I of this Act for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt

rules for conducting its proceedings, in the manner prescribed in section 3 of title I of this Act. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 3 of title I of this Act. The powers and duties prescribed and established by the provisions of section 3 of title I of this Act with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

SEC. 206. All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving any dispute arising from any cause between any common carrier by air engaged in interstate or foreign commerce or any carrier by air transporting mail for or under contract with the United States Government, and employees of such carrier or carriers, and unsettled on the date of approval of this Act, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

SEC. 207. If any provision of this title or application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 208. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.



RAILROAD RETIREMENT ACT

RAILROAD RETIREMENT ACT

(As amended through 1976)

AN ACT To amend an Act entitled "An Act to establish a retirement system for employees of carriers subject to the Interstate Commerce Act, and for other purposes," approved August 29, 1935.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. For the purposes of this Act—

(a) (1) The term "employer" shall include—

(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;

(iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term "employer" shall not include—

(i) any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tippie, and the operation of

equipment or facilities therefor, or in any of such activities; and

(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this paragraph.

(b) (1) The term "employee" means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a) (1) on or after August 29, 1935.

(2) The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a) who before or after August 29, 1935, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) (1) An individual is in the service of an employer whether his service is rendered within or without the United States if—

(i) (A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 3(j).

(2) Notwithstanding the provisions of subdivision (1) of this subsection—

(i) an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States;

(ii) an individual shall be deemed to be in the service of a local lodge or division of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) all, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or (B) the headquarters of such local lodge or division is located in the United States; and

(iii) an individual shall be deemed to be in the service of a general committee of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) he is representing a local lodge or division described in clause (A) or (B) of paragraph (ii); or (B) all, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or (C) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. For purposes of this subdivision, the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) (1) An individual shall be deemed to have been in the employment relation to an employer on August 29, 1935, if—

(i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1947;

(ii) he was in the service of an employer after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive;

(iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last employer by

whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason an employer by whom he was employed before August 29, 1935, or an employer who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in paragraph (ii); or

(iv) he was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual shall not be deemed to have been in the employment relation to an employer on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

(f) (1) The term "years of service" shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost and shall be computed in accordance with the provisions of section 3(i). Twelve calendar months consecutive or otherwise in each of which an employee has rendered such service or received such wages for time lost shall constitute a year of service. Ultimate fractions shall be taken at their actual value except that if the individual will have had not less than one hundred twenty-six months of service an ultimate fraction of six months or more shall be taken as one year.

(2) Where service prior to August 29, 1935, may be included in the computation of years of service as provided in subdivision (3) of section 3(i) it may be included as to—

(i) service rendered to a person which was an employer on August 29, 1935, irrespective of whether such person was an employer at the time such service was rendered;

(ii) service rendered to any express company sleeping-car company or carrier by railroad which was a predecessor of a company which on August 29, 1935, was an employer as defined in paragraph (i) of subsection (a) (1) irrespective of whether such predecessor was an employer at the time such service was rendered; and

(iii) service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on August 29, 1935.

(g) (1) For purposes of section 3(i) (2) of this Act an individual shall be deemed to have been in "military service" when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 3(i) (2) of this Act, a "war service period" shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense.

(3) For purposes of section 3(i) (2) of this Act, a "war period" shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(4) For purposes of section 3(i) (2) of this Act, a "war period" shall be deemed to have ended on the date on which hostilities ceased.

(h) (1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or

if the employee establishes, subject to the provisions of section 9, the period during which such compensation will have been earned.

(2) An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of determining amounts to be included in the compensation of an employee, the term "compensation" shall also include cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than \$20.

(4) Tips included as compensation by reason of the provisions of subdivision (3) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or, if no statement including such tips is so furnished, at the time received. Tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

(5) In determining compensation, there shall be attributable as compensation paid to an employee in calendar months in which he is in military service creditable under section 3(i) (2), in addition to any other compensation paid to him with respect to such months—

(i) for each such calendar month prior to 1968, \$160;

(ii) for each such calendar month after 1967 and prior to 1975, \$260; and

(iii) for each such calendar month after 1974, the amount which is creditable as such individual's "wages" under the third paragraph of section 209 of the Social Security Act.

(6) Notwithstanding the provisions of the preceding subdivisions of this subsection, the term "compensation" shall not include—

(i) tips, except as is provided under subdivision (3) of this subsection;

(ii) the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee;

(iii) remuneration for service which is performed by a non-resident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a) (15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(iv) remuneration earned in the service of a local lodge or division of a railway-labor-organization employer with respect

to any calendar month in which the amount of such remuneration is less than \$25;

(v) remuneration for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service";

(vi) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability; and

(vii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expense incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

(i) The term "Board" means the Railroad Retirement Board.

(j) The term "company" includes corporations, associations, and joint-stock companies.

(k) The term "employee" includes an officer of an employer.

(l) The term "person" means an individual, a partnership, an association, a joint-stock company, a corporation, or the United States or any other governmental body.

(m) The term "United States," when used in a geographical sense, means the States and the District of Columbia.

(n) The term "Social Security Act" means the Social Security Act as amended from time to time.

(o) An individual shall be deemed to have "a current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For the purposes of section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the

term "employment" as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

(p) The term "annuity" means a monthly sum which is payable on the first day of each calendar month for the accrual during the preceding calendar month.

(q) The terms "quarter" and "calendar quarter" shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(r) For purposes of this Act, a person shall be considered to be permanently insured under the Social Security Act on December 31, 1974, if he or she would be fully insured within the meaning of section 214(a) of that Act when he or she attains age 62 solely on the basis of his or her quarters of coverage under that Act acquired prior to January 1, 1975.

ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. (a)(1) The following-described individuals, if they shall have completed ten years of service and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) individuals who have attained the age of sixty-five;

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by $1/180$ for each calendar month that he or she is under age sixty-five when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which

standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(b) (1) An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection

(a) (1); and

(iv) had a current connection with the railroad industry at the time such annuity began to accrue;

shall, subject to the conditions set forth in subdivision (2) of this subsection and in subsections (e) and (h), be entitled to a supplemental annuity in the amount provided under section 3 of this Act: *Provided, however,* That in cases where an individual's annuity under subsection (a) (1) begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a) (1).

(2) No individual shall be entitled to a supplemental annuity provided by this subsection for any period after he renders any service as an employee for compensation after his supplemental annuity closing date, which is the last day of the month following the month in which he attains age 65: *Provided, however,* That the supplemental annuity closing date of an individual who attained age 65 prior to January 1, 1975, shall be determined under section 3(j) (4) of the Railroad Retirement Act of 1937: *Provided further,* That for an employee whose supplemental annuity closing date occurs after he

has completed at least 23 years of service but before he has completed 25 years of service and before he would have been entitled (upon filing an application therefor) to monthly insurance benefits under section 202(a) of the Social Security Act if he had no service as an employee under this Act, such closing date shall be extended to the earlier of (A) the day before the first day of the first month for which he would (on application) be entitled to monthly insurance benefits under section 202(a) of the Social Security Act if he had no service as an employee under this Act, or (B) the last day of the first month for which he qualifies for a supplemental annuity under this subsection.

(3) The provisions of subdivision (2) shall not supersede the provisions of any agreement reached through collective bargaining which provides for mandatory retirement at an age less than the applicable supplemental annuity closing date determined under such subdivision.

(c) (1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a) (1) and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained the age of 65, or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d) (1) (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 4 of this Act.

(2) A spouse who would be entitled to an annuity under subdivision (1) if he or she had attained the age of 65 may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/180 for each calendar month that the spouse is under age 65 when the annuity begins to accrue.

(3) For the purposes of this Act, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a) (1) who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d) (1) or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter, if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant were members of the same household, or such wife or husband was receiving regular contributions from such annuitant toward her or his support, or such annuitant has been ordered by any court to contribute to the support of such wife or husband: and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a) (1) began.

(d) (1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h),

be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

(i) a widow (as defined in section 216 (c) and (k) of the Social Security Act) or widower (as defined in section 216 (g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a) (1) began;

(ii) a widow (as defined in section 216 (c) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216 (e) and (k) of the Social Security Act) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than twenty-two years of age and a full-time student at an educational institution, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death; and

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employee's death and (C) will not have remarried after the employee's death: *Provided, however,* That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection.

(2) The period referred to in clause (B) of subdivision (1) (i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a) (3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d) (1) to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d) (3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time student" and "educational institution") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age twenty-two at a time when he is a full-time student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e) (1) No individual shall be entitled to an annuity under subsection (a) (1) until he shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1(a) (but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f)). As used in this subsection, the term "compensated service" shall not include any service as an elected public official of the United States, a State, or any political subdivision of a State.

(2) An annuity under subsection (a) (1) shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person, or persons, by whom he was last employed: *Provided, however*, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a) (1) prior to attaining age sixty-five: *Provided further*, That, notwithstanding the provisions of the preceding proviso and of

clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso; *And provided further*, That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) or supplemental annuity under subsection (b)(1) shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) began to accrue. Individuals receiving annuities under subsection (a)(1) shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) shall be paid to an individual with respect to any month in which the individual is under age sixty-five and is paid more than \$200 in earnings from employment or self-employment of any form: *Provided, however*, That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the age of sixty-five shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to the sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed \$2,400, the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of \$2,400, the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each \$200 of such excess, treating the last \$100 or more of such excess as \$200; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be

made first with respect to the month or months for which the annuity is larger.

(5) The annuity of a spouse under subsection (c) shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse under subsection (c) shall not be payable for any month if the individual's annuity under subsection (a)(1) is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 3(a) of this Act on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act and that portion of the individual's annuity as is computed under section 3(h) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided, however*, That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term "employment" as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's annuity under subsection (c) which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's annuity as is computed under section 4(e) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's annuity were a monthly insurance benefit under the Social Security Act.

(g)(1) No annuity shall be paid to a survivor under subsection (d) with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor is under the age of seventy-two and is charged with excess earnings under section 203(f) of the Social Security Act or, having engaged in any activity outside the United States, would be charged under such section 203(f) with any excess

earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of such Act: *Provided, however*, That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) shall report to the Board the receipt of excess earnings described in this subdivision.

(h)(1) In the event military service credited under section 3(i)(2) of this Act is or has been used as the basis or as a partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act of Congress, any annuity of an individual under subsection (a)(1) which is based in part on such military service shall be reduced, with respect to a calendar month for all or part of which such other benefit is also payable, by (i) the proportion which the number of years of service by which such military service increases the years of service bears to the total years of service, or (ii) the aggregate amount of such pension or other benefit with respect to that month, whichever would result in the smaller reduction: *Provided, however*, That in no case shall the reduction under this subdivision operate to reduce the annuity of an individual under subsection (a)(1) below the amount it would have been if military service had not been included in the individual's years of service. If the annuity of an individual under subsection (a)(1) is reduced for any month by reason of this subdivision, any annuity payable to the spouse of such individual for such month under subsection (c) shall be reduced proportionately.

(2) The supplemental annuity provided an individual by subsection (b) shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however*, That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse entitled to an annuity under subsection (c) or a survivor entitled to an annuity under subsection (d) for any month is also entitled to annuity under subsection (a)(1) for such month, the annuity under subsection (c) or (d) shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1): *Provided, however*, That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. (a) (1) The annuity of an individual under section 2(a) (1) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under paragraph (ii) of section 2(a) (1) of this Act shall, except for purposes of recomputations in accordance with the provisions of section 215(f) of the Social Security Act, be deemed to have attained age 65, and individuals entitled to an annuity under paragraph (iv) or (v) of such section 2(a) (1) shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

(b) (1) The amount of the annuity of an individual provided under subsection (a) of this section shall be increased by an amount equal to (A) the amount of the annuity to which such individual would have been entitled (without regard to the requirement that an individual's years of service be ten or more) under section 2(a) (1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, on the basis of his compensation and years of service prior to January 1, 1975, deeming such individual (i) to be eligible for such an annuity and (ii) to be entitled to no other benefit under either that Act or the Social Security Act except a benefit under the Social Security Act in the amount computed in accordance with the provisions of subclause (ii) of clause (C) of subsection (h) (1) or (h) (2) of this section, minus (B) the amount of the old-age insurance benefit to which such individual would have been entitled (before any deductions on account of work and subject to the last sentence of this subdivision) under the Social Security Act as in effect on December 31, 1974, if all his service as an employee after December 31, 1936, and before January 1, 1975, were included in the term "employment" as defined in that Act, and if such individual (i) were age 65 and otherwise eligible for such a benefit and (ii) had no wages or self-employment income under that Act other than wages derived from service as an employee after December 31, 1936, and before January 1, 1975. For purposes of computing amounts under clause (A) of this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a) (2) and 3(a) (3) of the Railroad Retirement Act of 1937 in cases where the individual is entitled to a benefit under subsection (h) (1) or (h) (2) of this section. For purposes of this subdivision, 18 "benefit computation years" shall be used in calculating an individual's "average monthly wage," except in computing increases in amounts determined under clause (A) of this subdivi-

sion pursuant to section 3(a)(6) of the Railroad Retirement Act of 1937.

(2) The amount computed under subdivision (1) of this subsection shall be increased by 65 per centum of the percentage increase obtained by comparing the unadjusted Consumer Price Index for the month of September 1976 with the unadjusted Consumer Price Index for the September immediately preceding the earlier of (A) the calendar year in which the individual's annuity under section 2(a)(1) of this Act begins to accrue or (B) the calendar year 1981.

(c) If an individual entitled to an annuity under section 2(a)(1) of this Act will have rendered service as an employee to an employer, or as an employee representative, subsequent to December 31, 1974, the amount of the annuity of such individual provided under the preceding subsections of this section shall be increased by \$1.50 for each of the first ten years of service that the individual has prior to January 1, 1975, and by \$1.00 for each year of service prior to January 1, 1975, that the individual has in excess of ten years.

(d)(1) The amount of the annuity of an individual provided under the preceding subsections of this section shall be increased according to the following formula:

$$I = Y (.005A + 4)$$

(2) The amount computed under subdivision (1) of this subsection shall be increased according to the following formula:

$$I = 2.6YC$$

(3) The amount computed under subdivisions (1) and (2) of this subsection shall be further increased according to the following formula:

$$I = .005Y [.65BC - (B - D)]$$

In no event shall this subdivision result in a decrease in the amounts computed under subdivisions (1) and (2).

(4) For purposes of the formulae set forth in this subsection:

"I" represents the amount of increase in dollars;

"A" represents the employee's average monthly compensation for service after 1974;

"Y" represents the number of years of service of the employee after 1974;

"C" represents the percentage increase (converted to a decimal fraction) obtained by comparing the unadjusted Consumer Price Index for the month of September 1976 with the unadjusted Consumer Price Index for the September immediately preceding the earlier of the calendar year in which the individual's annuity under section 2(a)(1) of this Act begins to accrue, or the calendar year 1981;

"B" represents the employee's average monthly compensation for his years of service after 1974 (disregarding, for this purpose, compensation for any month after 1980 in excess of one-twelfth of the maximum taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954 for the calendar year 1980):

"D" represents the employee's average monthly compensation for his years of service after 1974 (disregarding, for this purpose, compensation for any month after 1976 in excess of one-twelfth of the maximum taxable "wages" as defined in section 3121 of the Internal Revenue Code for the calendar year 1976).

(e) The supplemental annuity of an individual under section 2(b) of this Act shall be \$23 plus an additional amount of \$4 for each year of service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed \$43.

(f) (1) If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such begins to accrue, exceed an amount equal to the sum of individual's annuity under section 2(a) (1) of this Act (A) 100 per centum of his "final average monthly compensation" up to an amount equal to 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year in which such individual's annuity under section 2(a) (1) of this Act begins to accrue, plus (B) 80 per centum of so much of his "final average monthly compensation" as exceeds 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year in which such individual's annuity under section 2(a) (1) of this Act begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsections (b), (c), and (d) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsections (b), (c), and (d) of this section are reduced to zero, whichever occurs first: *Provided, however*, That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below \$1,200. For purposes of this subdivision, the "final average monthly compensation" of an individual shall be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 2(a) (1) of this Act begins to accrue by 24. For purposes of this subdivision, the term "compensation" shall include "compensation" as defined in section 1(h) of this Act, "wages" as defined in section 209 of the Social Security Act, "self-employment income" as defined in section 211(b) of the Social Security Act, and wages deemed to have been paid under section 217 or 229 of the Social Security Act on account of military service: *Provided, however*, That in no case shall the compensation with respect to any calendar month exceed the limitation on the compensation for such month prescribed in subsection (j) of this section. Wages and self-employment income included

as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income.

(2) If, in the case of an individual whose annuity under section 2(a)(1) of this Act began to accrue prior to January 1, 1983, the annuity (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act and disregarding any amount provided by subsection (h) of this section) plus the supplemental annuity to which such individual is entitled for any month under this Act, together with the annuity, if any, of the spouse of such individual (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act and disregarding any amount provided by section 4(e) of this Act, before any reductions under the provisions of section 2(f) of this Act, is less than the total amount which would have been payable to such individual and his spouse for such month, on the basis of the individual's compensation and years of service, under the provisions of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, disregarding, for purposes of the computations under such Railroad Retirement Act of 1937, compensation for any month after December 31, 1974, in excess of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year 1974, the annuity of such individual and the annuity of such spouse, if any, shall be increased, without regard to the provisions of subdivision (1) of this subsection, proportionately so as to equal such total amount. For the purpose of computing amounts under this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937. For purposes of computing amounts payable under the Railroad Retirement Act of 1937, any increases in the amounts determined under the first proviso of section 3(e) of such Act which would have become effective after December 31, 1974, shall be disregarded.

(3) If for any month in which an annuity accrues and is payable under this Act the annuity to which an individual is entitled under this Act (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, such annuity or annuities shall be increased proportionately to such total amount, or such additional amount: *Provided, however,* That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 2 of this Act

shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 2(c) of this Act if the individual from whom the spouse's annuity under this Act would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 216 (e) of the Social Security Act; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 223(c) (2) of the Social Security Act, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 2 of this Act except a spouse who could qualify for an annuity under section 2(c) of this Act when she attains age 60 or 62, as the case may be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act which shall be considered shall be those to which the persons included in the computation are entitled.

(g) Those portions of the annuity of an individual as are computed under subsections (b) and (d) of this section shall, if such individual's annuity under section 2(a) (1) of this Act began to accrue on or before the date on which the applicable increase under this subsection becomes effective, be increased by 32.5 per centum of the percentage increase, if any (rounded to the nearest one-tenth of 1 percent), obtained by comparing (A) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1977, with such index for the calendar quarter ending March 31, 1976, (B) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1978, with the higher of (i) such index for the calendar quarter ending March 31, 1977, or (ii) such index for the calendar quarter ending March 31, 1976, (C) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1979, with the highest of (i) such index for the calendar quarter ending March 31, 1978, (ii) such index for the calendar quarter ending March 31, 1977, or (iii) such index for the calendar quarter ending March 31, 1976, and (D) the unadjusted Consumer Price Index for the calendar quarter ending March 31, 1980, with the highest of (i) such index for the calendar quarter ending March 31, 1979, (ii) such index for the calendar quarter ending March 31, 1978, (iii) such index for the calendar quarter ending March 31, 1977, or (iv) such index for the calendar quarter ending March 31, 1976. The unadjusted Consumer Price Index for any calendar quarter shall be the arithmetical means of such index for the three months in such quarter. The increases provided under clauses (A), (B), (C), and (D) of this subsection shall be effective on June 1, 1977, June 1, 1978, June 1, 1979, and June 1, 1980, respectively.

(h) (1) The amount of the annuity provided under subsections (a) through (d) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the

time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(2) The amount of the annuity provided under subsections (a) through (d) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age

65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(3) The amount of the annuity provided under subsections (a) through (d) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a) (1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the wife's husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(4) The amount of the annuity provided under subsections (a) through (d) of this section of an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (3) of this subsection, but (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this Act or (D) the primary insurance amount to which such

individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this Act and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term "employment" as defined in that Act.

(5) The amount computed under subdivision (1), (2), (3), or (4) of this subsection shall be increased by the same percentage, or percentages, as benefits under the Social Security Act are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act, during the period from January 1, 1975, to the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue.

(i)(1) The "years of service" of an individual shall include all his service subsequent to December 31, 1936.

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further,* That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further,* That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The "years of service" of an individual who was an employee on August 29, 1935, shall, if the total number of his "years of service" as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its

business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the "years of service" include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(j) The "average monthly compensation" shall be the average compensation paid to an employee with respect to calendar months included in his "years of service," except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924-1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however,* That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before June 1, 1959, or in excess of \$400 for any month after May 31, 1959, and before November 1, 1963, or in excess of \$450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, shall be recognized. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. If the "average monthly compensation" computed under this subsection is not a multiple of \$1, it shall be rounded to the next lower multiple of \$1. Where an employee claims credit for months of service

rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 9 of this Act has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

(k) The annuity of an individual who shall have been an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which he shall have been employed were an employer.

(l) In cases where an annuity awarded under paragraph (iii) of section 2(a) (1) or under section 2(c) (2) of this Act is increased either by a change in the law or by a recomputation, the reduction for the increase in the annuity shall be determined separately and the period with respect to which the reduction applies shall be determined as if such increase were a separate annuity payable for and after the first month for which such increase is effective.

(m) The annuity of any individual under subsection (a) of this section for any month shall be reduced, but not below zero, by the amount of any monthly benefit payable to that individual for that month under title II of the Social Security Act.

COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. (a) (1) The annuity of a spouse of an individual under section 2(c) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, spouses entitled to an annuity under clause (B) of paragraph (ii) of section 2(c) (1) of this Act shall be deemed to have attained age 65.

(b) The amount of the annuity of a spouse of an individual provided under subsection (a) of this section shall be increased by an amount equal to 50 per centum of that portion of the individual's annuity as is computed under subsections (b), (c), and (d) of section 3 of this Act: *Provided, however*, That if the spouse is entitled to an annuity amount provided by subsection (e) (1) or (e) (2) of this section, the amount of such spouse's annuity provided by the preceding provisions of this subsection shall be reduced by the amount by which the amount computed in accordance with the provisions of clause (C) of subsection (e) (1) or (e) (2) of this section was increased by the Social Security Amendments of 1965, 1967, and 1969, disregarding (A) the amount of any such increase resulting from the Social Security Amendments of 1967 equal to, or less than, the excess of \$5 over

5.8 per centum of the lesser of (i) the amount computed under clause (C) of subsection (e) (1) or (e) (2) of this section before any increases derived from legislation enacted after the Social Security Amendments of 1967 or (ii) the amount of the spouse's annuity to which such spouse would have been entitled under section 2(e) of the Railroad Retirement Act of 1937, without regard to section 3(a) (2) of that Act or to increases derived from legislation enacted after 1968 and before any reduction on account of age, on the basis of the individual's compensation and years of service prior to January 1, 1975, and (B) the amount of any such increase resulting from the Social Security Amendments of 1969 equal to, or less than, \$5: *Provided further*, That if the spouse is entitled to an annuity under section 2(a) (1) of this Act, the amount of the annuity of such spouse under this subsection shall, subject to the third proviso of this subsection, be increased by an amount equal to the amount by which the amount of the annuity of such spouse provided under subsection (a) of this section was reduced by reason of the provisions of subsection (i) (2) of this section: *And provided further*, That if the total of (A) the amount of the spouse's annuity provided under subsection (a) of this section (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act), or, in the case of a spouse entitled to an annuity under section 2(a) (1) of this Act or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, the amount to which such spouse would be entitled under subsection (a) if she or he were not entitled to an annuity under section 2(a) (1) of this Act or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, plus (B) the amount of her or his annuity under this subsection would, with respect to any month, before any reductions on account of age, exceed 110 per centum of an amount equal to the maximum amount which could be paid to anyone, with respect to such month, as a wife's insurance benefit under section 202(b) of the Social Security Act, the amount of the annuity of such spouse under this subsection shall be reduced until the total of such annuity amounts equals 110 per centum of such amount. The Board shall have the authority to approximate the amount of any reduction prescribed by the first proviso of this subsection.

(c) If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 2(a) (1) of this Act began to accrue (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 3(f) (1) of this Act would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity under section 2(a) (1) of this Act began to accrue, exceed the amount determined under clauses (A) and (B) of section 3(f) (1) of this Act, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on

which the individual's annuity under section 2(a)(1) began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 3(f)(1) or until such amount under subsection (b) is reduced to zero, whichever occurs first. If, after such amount under subsection (b) is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B) of this subsection still exceeds the amount determined under clauses (A) and (B) of section 3(f)(1), the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 3 as of the date on which the individual's annuity under section 2(a)(1) began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 3(f)(1) or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the preceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below \$1,200.

(d) That portion of the annuity of the spouse of an individual as is determined under subsections (b) and (c) of this section shall be increased by the same percentage, or percentages, as the individual's annuity is, or has been, increased pursuant to the provisions of section 3(g) of this Act.

(e)(1) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2(a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under the Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however*, That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 3(h)(1) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

(2) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his or her wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term "employment" as defined in that Act, if such individual had no wages or self-employment income under that Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however,* That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 3(h)(2) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

(3) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual is entitled to an amount determined under the provisions of section 3(h)(1) or 3(h)(2) of this Act and (B) such spouse is not entitled to an amount determined under the provisions of subdivision (1) or (2) of this subsection, shall be increased by an amount equal to 50 per centum of the portion of the annuity of such individual determined under the provisions of section 3(h)(1) or 3(h)(2) of this Act prior to any increases under the provisions of section 3(h)(5) of this Act.

(4) The amount determined under the provisions of subdivision (1), (2), or (3) of this subsection shall be increased by the same percentage or percentages, as wife's and husband's insurance benefits under section 202 of the Social Security Act are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act, during the period from January 1, 1975, to the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue.

(f)(1) The annuity of a survivor of a deceased employee under section 2(d) of this Act shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social

Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 2(d)(1) of this Act and who has not attained age 62 shall be deemed to be age 62: *Provided, however,* That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 2(d)(1) on the basis of disability for the month before the month in which he or she attained age 60, and

(ii) a widow or widower or a child who is entitled to an annuity under section 2(d)(1) of this Act on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act on the basis of disability.

(g) The annuity of a survivor of a deceased employee determined under subsection (f) of this section shall, with respect to any month, be increased by an amount equal to 30 per centum of the amount of the annuity (before any deductions on account of work) to which such survivor is entitled for such month under the provisions of subsection (f) of this section, or to which such survivor would have been entitled for such month under such subsection if such survivor were entitled to no other monthly benefit under section 2 of this Act or under the Social Security Act: *Provided, however,* That, if a widow or widower of a deceased employee is entitled to an annuity under section 2(a)(1) of this Act and if either such widow or widower or such deceased employee will have completed ten years of service prior to January 1, 1975, the amount of the annuity of such widow or widower under the preceding provisions of this subsection shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from January 1, 1975, to the later of the date on which such widow's or widower's annuity under section 2(a)(1) of this Act began to accrue or the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under the preceding provisions of this subsection and subsection (f) of this section as of the later of the date on which such widow's or widower's annuity under section 2(a)(1) of this Act began to accrue or the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue: *Provided further,* That, if a widow or widower of a deceased employee is not entitled to an annuity under section 2(a)(1) of this Act or to an old-age insurance benefit or a disability insurance benefit under the

Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause the total of the annuity amounts to which such widow or widower is entitled (before any deductions on account of work) under this subsection and subsection (f) of this section to equal the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 2(e) and 2(f) of this Act) as a spouse under subsections (a), (b), and (e) (3) of this section (after any reduction on account of age) in the month preceding the employee's death: *Provided further*, That, if a widow or widower of a deceased employee is entitled to an annuity under section 2(a) (1) of this Act or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act or subsection (i) (2) of this section but before any deductions on account of work) under this subsection and subsection (f) of this section to equal (B) (i) the total of the annuity amounts, if any, to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 2(e) and 2(f) of this Act) as a spouse under subsections (a), (b), and (e) (3) of this section (after any reduction on account of age) in the month preceding the employee's death less (ii), if such widow or widower is entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act but was not entitled to such a benefit in the month preceding the employee's death, the amount by which the annuity amount payable under subsection (a) of this section to such widow or widower as a spouse in the month preceding the employee's death would have been reduced by reason of section 202(k) or 202(q) of the Social Security Act if such widow or widower had been entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act in the month preceding the employee's death in an amount equal to the amount of such benefit at the time such benefit first began to accrue to such widow or widower.

(h) The amount of the annuity of the widow or widower of a deceased employee determined under subsections (f) and (g) of this section, if such deceased employee will have completed ten years of service prior to January 1, 1975, and such widow or widower will have been permanently insured under the Social Security Act of December 31, 1974, shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from January 1, 1975, to the later of the date on which such widow's or widower's

annuity under section 2(d)(1) of this Act began to accrue or the date beginning the first month for which such widow or widower is entitled to an old age insurance benefit or disability insurance benefit under the Social Security Act, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act but before any deductions on account of work) under subsections (f) and (g) of this section as to the later of the date on which such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue or the date beginning the first month for which such widow or widower is entitled to an old-age insurance benefit or disability insurance benefit under the Social Security Act: *Provided, however*, That, if a widow or widower was entitled (or would have been entitled except for the provisions of section 2(e) or 2(f) of this Act) to an annuity amount under subdivision (1) or (2) of subsection (e) of this section in the month preceding the employee's death, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act but before any deductions on account of work) under subsections (f) and (g) of this section and the preceding provisions of this subsection as of the date such widow's or widower's annuity under section 2(d)(1) of this Act began to accrue to equal (B) the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of section 2(e) or 2(f) of this Act) as a spouse under subsections (a), (b), and (e) of this section (after any reductions on account of age) in the month preceding the employee's death.

(i) (1) The annuity of any spouse under subsection (a) of this section for any month shall be reduced, but not below zero, by the amount of any wife's or husband's insurance benefit payable to such spouse for that month under title II of the Social Security Act.

(2) If a spouse entitled to an annuity under section 2(c) of this Act or a survivor entitled to an annuity under section 2(d) of this Act for any month is also entitled to an annuity under section 2(a)(1) of this Act for such month, the annuity amount of such spouse determined under subsection (a) of this section or of such survivor under subsection (f) of this section shall, after any reduction pursuant to subdivision (1) of this subsection, be reduced by the amount of the annuity of such spouse or such survivor determined under section 3(a) of this Act.

ANNUITY BEGINNING AND ENDING DATES

SEC. 5. (a) An annuity under section 2 of this Act shall begin with the month in which eligibility therefor was otherwise acquired, but—

(i) not earlier than the date specified in the application therefor;

(ii) not earlier than the first day of the twelfth month before the month in which the application therefor was filed; and

(iii) in the case of an applicant otherwise eligible for an annuity under section 2(a)(1) or 2(c) not earlier than the date following the last day of compensated service of the applicant.

(b) An application for any payment under this Act shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an annuity under this Act shall, unless the applicant specifies otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or the Social Security Act. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 2(a) (1) of this Act for the month preceding the month in which he attained the age of 65, shall be deemed to have filed an application for an annuity under paragraph (i) of section 2(a) (1) on the date on which he attained age 65, and a widow or widower who was entitled to an annuity under section 2(d) (1) of this Act on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 2(d) (1) on the basis of age on the date on which she or he attained age 60.

(c) (1) An individual's entitlement to an annuity under paragraph (i), (ii), or (iii) of section 2(a) (1) or to a supplemental annuity under section 2(b) shall end with the month preceding the month in which he dies.

(2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 2(a) (1) shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such paragraphs, (B) the last day of the month preceding the month in which he attains age 65 or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

(3) The entitlement of a spouse of an individual to an annuity under section 2(c) shall end on the last day of the month preceding the month in which (A) the spouse or the individual dies, (B) the spouse and the individual are absolutely divorced, or (C) in the case of a wife who does not satisfy the requirements of clause (ii) (A) or (ii) (B) of section 2(c) (1) (other than a wife who is receiving such annuity by reason of an election under section 2(c) (2)), such wife no longer has in her care a child described in clause (ii) (C) of section 2(c) (1), whichever first occurs.

(4) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 2(d) (1) on the basis of age shall end on (A) the last day of the month preceding the month in which she or he dies or (B) the last day of the month preceding the month in which she or he remarries after the employee's death, whichever first occurs.

(5) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 2(d) (1) on the basis of disability shall end on (A) the last day of the month preceding the month in which she or he dies, (B) the last day of the month preceding the month in which she or he remarries after the employee's death, (C) the last day of the second month following the month in which she or he ceases to be disabled as provided for purposes of such paragraph, or (D) the last day of the month preceding the month in which she or he attains age 60, whichever first occurs.

(6) The entitlement of a widow of a deceased employee to an annuity under paragraph (ii) of section 2(d) (1) shall end on (A) the last day of the month preceding the month in which she dies, (B) the last

day of the month preceding the month in which she remarries after the employee's death, or (C) the last day of the month preceding the month in which she no longer has in her care a child described in clause (B) of such paragraph (ii), whichever first occurs.

(7) The entitlement of a child of a deceased employee to an annuity under paragraph (iii) of section 2(d)(1) shall end on (A) the last day of the month preceding the month in which he or she dies, (B) the last day of the month preceding the month in which he or she marries, (C) the last day of the month preceding the month in which he or she attains age 18 and does not meet the qualifications set forth in clause (B) or (C) of such paragraph (iii), (D) the last day of the month preceding (i) the month during no part of which he or she is a full-time student or (ii) the month in which he or she attains age 22, and does not meet the qualifications set forth in clause (A) or (C) of such paragraph (iii), or (E) the last day of the second month following the month in which he or she ceases to be disabled for purposes of such paragraph (iii) and does not meet the qualifications set forth in clause (A) or (B) of such paragraph (iii), whichever first occurs. A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated by reason of clause (E) of this subdivision because he or she ceased to be disabled and who again becomes disabled as provided in clause (C) of such paragraph (iii), may become reentitled to an annuity on the basis of such disability upon his or her application for such reentitlement. A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or (C) of such paragraph (iii), if he or she has filed an application for such reentitlement.

(8) The entitlement of a parent of a deceased employee to an annuity under paragraph (iv) of section 2(d)(1) shall end on the last day of the month preceding the month in which (A) such parent dies or (B) such parent remarries after the employee's death, whichever first occurs.

LUMP-SUM PAYMENTS

SEC. 6. (a)(1) Annuities under section 2(a)(1) and supplemental annuities under section 2(b) which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under subsection (b) of this section for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this subdivision to such person

or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such annuities were a lump sum payable under subsection (c) (1) of this section.

(2) Annuities under section 2(d) which will have become due a survivor of an employee but will not have been paid at the time of such survivor's death shall be payable to the person, if any, who is determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to the children, grandchildren, parents, or brothers and sisters of the deceased employee in the same manner as if such unpaid annuities were a lump sum payable under subsection (c) (1) of this section.

(3) Annuities under section 2(c) which will have become due a spouse of an individual but which will not have been paid at the time of such spouse's death shall be payable to the individual from whose employment such annuities derived and who will not have died before receiving payment of such annuities. If there be no such individual, such annuities shall be paid as provided in the last two sentences of subdivision (1) of this subsection as if such annuities were annuities due to an individual but unpaid at the time of such individual's death.

(4) Applications for accrued and unpaid annuities provided for in the preceding subdivisions of this subsection shall be filed prior to the expiration of two years after the death of the person to whom such annuities were originally due.

(5) If there is no person to whom all or any part of the payments described in subdivision (1), (2), or (3) can be made, such payment or part thereof shall escheat to the credit of the Railroad Retirement Account.

(6) For the purposes of this subsection and subsection (c) of this section, a widow or widower of an individual shall be deemed to have been living with the individual at the time of the individual's death if the applicable conditions set forth in section 216(h) (2) or (3) of the Social Security Act, as in effect before 1957, are fulfilled.

(7) In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the widow, widower, child, or parent of an employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied. In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the grandchild, brother, or sister of an employee as claimed, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such employee was domiciled at the time of his death, or if such employee was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking personal property as a grandchild, brother, or sister shall be deemed such.

(b) (1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of

section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section 5(f)(1) on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, widower, child, or parent who would on proper application therefore be entitled to receive an annuity under section 2(d) of this Act for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 2(g) and 2(h) of this Act, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that that monthly benefit under section 2(d) of this Act was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

(c) (1) Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this Act or the Social Security Act upon attaining the age of eligibility therefor at a future date) will be payable under this Act or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this subdivision—

- (i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or
- (ii) if there be no such widow or widower, to any child or children of such employee; or

(iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or

(iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or

(v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or

(vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee:

Provided, however, That if the employee is survived by a widow, widower, or parent who may upon attaining the age of eligibility be entitled to benefits under this Act or under the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this Act on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the deceased employee's wages from (A) employment with an employer as defined in section 1(a) of this Act or (B) service as an employee representative as defined in section 1(c) of this Act. Any election made and filed by a widow, widower, or parent pursuant to this subdivision shall be legally effective according to its terms.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to (A) the sum of 4 per centum of the deceased employee's compensation paid after December 31, 1936, and prior to January 1, 1947, plus 7 per centum of such employee's compensation paid after December 31, 1946, and before January 1, 1959, plus 7½ per centum of such employee's compensation paid after December 31, 1958, and before January 1, 1962, plus 8 per centum of such employee's compensation paid after December 31, 1961, and before January 1, 1966, plus an amount equal to the total of all employee taxes payable by such employee after December 31, 1965, and before January 1, 1975, under the provisions of section 3201 of the Railroad Retirement Tax Act (excluding, for this purpose, the amount of the employee tax attributable to that portion of the tax rate derived from section 3101(b) of the Internal Revenue Code of 1954), plus one-half of 1 per centum of the compensation on which such taxes were payable, deeming the compensation attributable to creditable military service after June 30, 1963, and before January 1, 1975, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of the Railroad Retirement Tax Act to be employee taxes under section 3201 of such Act, minus (B) the sum of all benefits paid to such employee, and to others deriving from such employee, during his or her life, or to others by reason of his or her death, under this Act, the Railroad Retirement Act of 1937, or the Social Security Act (excluding, for this purpose, payments to providers of services under section 7(d) of this Act or section 21 of the Railroad Retirement Act of 1937, any amounts by which that portion of the annuities provided the employee under section 3(a) of this Act or his spouse under section 4(a) of this Act were increased by reason of the employee's wages and self-employment income derived from employment and self-employment under the Social Security Act,

that portion of the annuities provided the employee under section 3(h) of this Act or his spouse under section 4(e) of this Act, and so much of the benefits paid to the employee and to others deriving from him or her under the Social Security Act during his or her lifetime as would have been payable under that Act if such employee had not rendered service as an employee as defined in section 1(b) of this Act). In computing compensation for purposes of this subdivision there shall be excluded compensation in excess of \$300 for any month before July 1, 1954; compensation in excess of \$350 for any month after June 30, 1954, and before June 1, 1959; compensation in excess of \$400 for any month after May 31, 1959, and before November 1, 1963; compensation in excess of \$450 for any month after October 31, 1963, and before October 1, 1965; and compensation in excess of (i) \$450 or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965.

(d) (1) Every individual who will have completed ten years of service at the time of his retirement or death, but does not meet the qualifications for an annuity amount determined under the provisions of section 3(h)(1) or 3(h)(2) of this Act, shall, at the time his annuity under section 2(a)(1) begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1) of this Act, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the sum of (A) 1.5 per centum of so much of such individual's combined earnings for any calendar year after 1950 and before 1954 as is in excess of \$3,600, plus (B) 2 per centum of so much of such individual's combined earnings for any calendar year after 1953 and before 1957 as is in excess of \$4,200, plus (C) 2.25 per centum of so much of such individual's combined earnings for any calendar year after 1956 and before 1959 as is in excess of \$4,200, plus (D) 2.5 per centum of so much of such individual's combined earnings for the calendar year 1959 as is in excess of \$4,800, plus (E) 3 per centum of so much of such individual's combined earnings for each of the calendar years 1960 and 1961 as is in excess of \$4,800, plus (F) 3.125 per centum of so much of such individual's combined earnings for the calendar year 1962 as is in excess of \$4,800, plus (G) 3.625 per centum of so much of such individual's combined earnings for any calendar year after 1962 and before 1966 as is in excess of \$5,400, plus (H) 4.2 per centum of so much of such individual's combined earnings for the calendar year 1966 as is in excess of \$6,600, plus (I) 4.4 per centum of so much of such individual's combined earnings for the calendar year 1967 as is in excess of \$6,600, plus (J) 3.8 per centum of so much of such individual's combined

earnings for the calendar year 1968 as is in excess of \$7,800, plus (K) 4.2 per centum of so much of such individual's combined earnings for each of the calendar years 1969 and 1970 as is in excess of \$7,800, plus (L) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1971 as is in excess of \$7,800, plus (M) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1972 as is in excess of \$9,000, plus (N) 4.85 per centum of so much of such individual's combined earnings for the calendar year 1973 as is in excess of \$10,800, plus (O) 4.95 per centum of so much of such individual's combined earnings for the calendar year 1974 as is in excess of \$13,200. For purposes of this subsection, the term "combined earnings" shall include "compensation" as defined in section 1(h) of the Railroad Retirement Act of 1937, "wages" as defined in section 209 of the Social Security Act, and "self-employment" income as defined in section 211(b) of the Social Security Act.

POWERS AND DUTIES OF THE BOARD

SEC. 7. (a) This Act shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this Act becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 1(a)(1) of this Act, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b) (1) The Board shall have and exercise all the duties and powers necessary to administer this Act. The Board shall take such steps as may be necessary to enforce such Act and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to annuities or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

(2) In the case of—

(A) an individual who will have completed ten years of service creditable under this Act,

(B) the wife or husband of such an individual,

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of this Act, and

(D) any other person entitled to benefits under title II of the Social Security Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death),

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this Act then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act as are not inconsistent with the express provisions of this Act. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by the Act, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however*, That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4) The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.

(5) The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of this Act. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this Act, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the

United States to furnish such information and records as shall be necessary for the administration of this Act, including subdivision (2) of this subsection. The several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the District Court of the United States for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) The Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this Act. The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 9 of this Act, of determinations under section 2 of this Act, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 18 of this Act. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however,* That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on a periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be conclusive on the Board: *Provided, however,* That if evidence

inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this Act or the Railroad Unemployment Insurance Act, or both, the Board may place, without regard to the numerical limitations contained in section 505 of the Classification Act of 1949, as amended, four positions in grade GS-16 of the General Schedule established by that Act, four positions in grade GS-17 of such schedule, and one position in grade GS-18 of such schedule.

(c)(1) Benefit payments determined by the Board to be payable under this Act shall be made from the Railroad Retirement Account, except that payments of supplemental annuities under section 2(b) of this Act shall be made from the Railroad Retirement Supplemental Account.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health, Education, and Welfare shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and in the Federal Insurance Contributions Act and (B) this Act had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health, Education, and Welfare shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from

such Trust Fund to the Railroad Retirement Account. Any amount so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health, Education, and Welfare pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health, Education, and Welfare for transfer from any such Trust Fund or from the Railroad Retirement Account.

(3) For purposes of subdivision (2), for any fiscal year, the rate of interest to be used shall be equal to the average rate of interest computed as of May 31 preceding the close of such fiscal year, borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(d) (1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, posthospital home health services, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 8, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this Act or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse, had such spouse's husband or wife ceased compensated service; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includible in the computation of an annuity under section 3(f) (3) of this Act, for not less than 24 consecutive months and (B) could have been entitled for 24 consecutive calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1867, 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

(e) The Board is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Railroad Retirement Account, to the Railroad Retirement Supplemental Account, or to the Railroad Unemployment Insurance Account, or to the Board, or any member, officer, or employee thereof, for the benefit of such accounts or any activity financed through such accounts. Any such gift accepted pursuant to the authority granted in this subsection

shall be deposited in the specific account designated by the donor or, if the donor has made no such specific designation, in the Railroad Retirement Account.

COURT JURISDICTION

SEC. 8. Decisions of the Board determining the rights or liabilities of any person under this Act shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act except that the time within which proceedings for the review of a decision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

RETURNS OF COMPENSATION

SEC. 9. Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as to the amount of compensation paid to an employee during each period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made.

ERRONEOUS PAYMENTS

SEC. 10. (a) If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this Act, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this Act, or the Railroad Unemployment Insurance Act may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual.

(b) Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

(c) There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this Act to an individual or payment has been made to an individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of the Acts or would be against equity or good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

WAIVER OF ANNUITIES

SEC. 11. Any person awarded an annuity under this Act may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit.

INCOMPETENCE

SEC. 12. (a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however,* That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this Act or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power every-

where, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this or any other Act of Congress now or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

PENALTIES

SEC. 13. (a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this Act, including the provisions of section 7(b) (2) thereof, or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this Act, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this Act shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account.

EXEMPTION FROM LEGAL PROCESS

SEC. 14. Notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated: *Provided, however,* That the provisions of this section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 2(b) of this Act from income taxable pursuant to the Federal income tax provisions of the Internal Revenue Code of 1954.

RAILROAD RETIREMENT ACCOUNT

SEC. 15. (a) The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with the provisions of section 7(c) (1) of this Act, and to provide for expenses necessary for the Board in the administration of all provisions of this Act, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act, except those portions of the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay

supplemental annuities at the level provided under section 3(e) of this Act and, with respect to those entitled to supplemental annuities under section 205(a) of title II of this Act, at the level provided under section 205(a). The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions of this subsection and what portion of such taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Retirement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection.

(b) In addition to the amount appropriated in subsection (a) of this section, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, such amount as the Board determines to be necessary to meet (A) the additional costs, resulting from the crediting of military service under this Act, of benefits payable under section 2 of this Act, but only to the extent that such Account is not reimbursed for such costs under section 7(c)(2), (B) the additional administrative expenses resulting from the crediting of military service under this Act, and (C) any loss in interest to such Account resulting from the payment of additional benefits based on military service credited under this Act: *Provided, however,* That, in determining the amount to be appropriated to the Railroad Retirement Account for any fiscal year pursuant to the provisions of this subsection, there shall not be considered any costs resulting from the crediting of military service under this Act for which appropriations to such Account have already been made pursuant to section 4(1) of the Railroad Retirement Act of 1937. Any determination as to loss in interest to the Railroad Retirement Account pursuant to clause (C) of the first sentence of this subsection shall take into account interest from the date each annuity based, in part, on military service began to accrue or was increased to the date or dates on which the amount appropriated is credited to the Account. The cost resulting from the payment of additional benefits under this Act based on military service determined pursuant to the preceding provisions of this subsection shall be adjusted by applying thereto the ratio of the total net level cost of all benefits under this Act to the portion of such net level cost remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability as determined under the last completed actuarial valuation pursuant to the provisions of subsection (g) of this section. At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board shall, as promptly as practicable, determine the amount to be appropriated to the Account pursuant to the provisions

of this subsection, and shall certify such amount to the Secretary of the Treasury for transfer from the general fund in the Treasury to the Railroad Retirement Account. When authorized by an appropriation Act, the Secretary of the Treasury shall transfer to the Railroad Retirement Account from the general fund in the Treasury such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subsection and certified by the Board for transfer to such Account. In any determination made pursuant to section 7(c) (2) of this Act, no further charges shall be made against the Trust Funds established by title II of the Social Security Act for military service rendered before January 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of section 4(1) of the Railroad Retirement Act of 1937 shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken in account in making any such determination.

(c) The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 2(b) of this Act, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section.

(d) There is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1976, such sums as the Board determines to be necessary on a level basis to pay before the end of fiscal year 2000 the total of (A) the amounts of the annuities paid and to be paid after 1974 pursuant to the provisions of sections 3(h), 4(e), and 4(h) of this Act and pursuant to the provisions of sections 204(a) (3), 204(a) (4), 206(3), and 207(3) of title II of this Act, plus (B) any loss in interest to such Account resulting from the payment of such amounts reduced by (C) such amount as the Board determines, on an estimated basis, is equal to the excess of (i) the interest which such account will actually earn in the fiscal years 1976 through 2000 over (ii) the interest which such account would have earned in such fiscal years if the provisions of subsection (e) of this section were identical to the provisions of section 15(c) of the Railroad Retirement Act of 1937. The Board shall, at the time of each actuarial valuation made prior to the fiscal year 2000 pursuant to the provisions of subsection (g) of this section re-evaluate the amount determined under the preceding sentence for the purpose of determining the amounts to be appropriated thereunder. Whenever the Board finds at any time that the balance in the Railroad Retirement Supplemental Account will be insufficient to pay the supplemental annuities which it estimates are due, or will become due, under section 2(b) of this Act, it shall request the Secretary

of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of such supplemental annuities, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the Railroad Retirement Supplemental Account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such supplemental annuities, it shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such supplemental annuities, plus interest at an annual rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer.

(e) At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the "Secretary") to invest such portion of the amounts credited to the Railroad Retirement Account and the Railroad Retirement Supplemental Account as, in the judgment of the Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided*, That the interest yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special

obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with the foregoing requirements will provide the greatest rate of return on the funds invested.

(f) The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and the other from recommendations made by representatives of employers as defined in paragraph (i) of section 1(a)(1) of this Act. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The actuaries so selected shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension plans: *Provided, however,* That these requirements shall not apply to any actuary who served as a member of the Committee prior to January 1, 1975. The Committee shall examine the actuarial reports and estimates made by the Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the Committee, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

(g) The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement and Railroad Retirement Supplemental Accounts. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this Act and shall include such estimate in its annual report.

(h) There are hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this Act.

PRIVATE PENSIONS

SEC. 16. Nothing in this Act shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities paid to such employees under this Act, nor shall this Act be taken as terminating any trust heretofore created for the payment of such pensions or gratuities. The annuity, except a supplemental annuity under section 2(b), of an individual shall not be reduced on account of any pension or gratuity paid by an employer to such individual.

FREE TRANSPORTATION

SEC. 17. It shall not be unlawful for carriers by railroad subject to this Act to furnish free transportation to individuals receiving annuities under this Act in the same manner as such transportation is furnished to employees in their service.

CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. (1) Except as provided in subdivision (2), the term "employment" as defined in section 210 of the Social Security Act shall not include service performed by an individual as an employee as defined in section 1(b) of this Act.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service or (B) will have completed ten or more years of service but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 of that Act, section 210(a) (9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

AUTOMATIC BENEFIT ELIGIBILITY REQUIREMENT ADJUSTMENTS

SEC. 19. (a) If title II of the Social Security Act is amended at any time after December 31, 1974, to reduce the eligibility requirements for old-age insurance benefits, disability insurance benefits, wife's insurance benefits payable to a wife, husband's insurance benefits, child's insurance benefits payable to a child of a deceased individual, widow's insurance benefits payable to a widow, widower's insurance benefits, mother's insurance benefits payable to a widow, or parent's insurance benefits, such reduced eligibility requirements shall be applicable, in accordance with regulations prescribed by the Board, to individuals, spouses, or survivors, as the case may be, under section 2 of this Act to the extent that such reduced eligibility requirements would provide such individuals, spouses, or survivors with entitlement to annuities under such section 2 to which they would not be entitled except for such reduced eligibility requirements: *Provided, however*, That no annuity shall be paid to any person pursuant to the provisions of this subsection if that person does not satisfy an eligibility requirement imposed by section 2 of this Act of a kind not imposed by the Social Security Act on December 31, 1974, or an eligibility requirement imposed by section 2 of this Act of a kind which was imposed by the Social Security Act on December 31, 1974, but which was not reduced by the amendment to that Act: *Provided further*, That the annuity amounts to which such individuals, spouses, or survivors will be entitled under this Act by reason of the provisions of this sub-

section shall be only such amounts as are determined under the provisions of section 3(a), 4(a), or 4(f), respectively, of this Act.

(b) If title II of the Social Security Act is amended at any time after December 31, 1974, to provide monthly insurance benefits under that Act to a class of beneficiaries not entitled to such benefits thereunder prior to January 1, 1975, every person who is a member of such class of beneficiaries shall be entitled to annuities under section 2 of this Act, in accordance with regulations prescribed by the Board, in an amount equal to the amount of the monthly insurance benefit to which such person would have been entitled under the Social Security Act if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(c) If section 226 or title XVIII of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits payable thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this Act), and those deriving from him, in the same manner, and to the same extent, as if his service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service, and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health, Education, and Welfare has with respect to individuals insured under the Social Security Act.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) No annuity or other benefit shall be payable to any person on the basis of the compensation and years of service of an individual by reason of the provisions of subsection (a), (b), or (c) of this section if, and to the extent that, such annuity or other benefit would duplicate a benefit payable to such person on the basis of such compensation and years of service under a provision of the Social Security Act, or any other Act of Congress, which becomes effective after December 31, 1974.

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service, and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

(3) If the Social Security Act is amended after December 31, 1974, to remove any, or all, restriction on the receipt of more than one monthly insurance benefit thereunder, annuity amounts provided a person under section 3(h), 4(e), or 4(h) of this Act, or under section 204(a)(3), 204(a)(4), 206(3), or 207(3) of title II of this Act, shall be reduced (but not below zero) by the amount

of any annuity provided such person under this Act by reason of such amendment.

(4) If and to the extent that an annuity or other benefit payable to a person by reason of the provisions of subsection (a), (b), or (c) of this section duplicates an annuity or other benefit then payable to such person under other provisions of this Act, such annuity or other benefit then payable under other provisions of this Act shall be reduced (but not below zero) by the amount of the annuity or other benefit payable by reason of subsection (a), (b), or (c).

SEPARABILITY

SEC. 20. If any provision of this Act, or the application thereof to any person or circumstance, should be held invalid, the remainder of such Act, or the application of such provision to other persons or circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 21. This Act may be cited as the "Railroad Retirement Act of 1974."

The first part of the paper discusses the importance of the
 study of the history of the United States. It is argued that
 the study of the history of the United States is essential
 for a full understanding of the present. The second part
 of the paper discusses the importance of the study of the
 history of the United States. It is argued that the study
 of the history of the United States is essential for a full
 understanding of the present. The third part of the paper
 discusses the importance of the study of the history of the
 United States. It is argued that the study of the history
 of the United States is essential for a full understanding
 of the present. The fourth part of the paper discusses the
 importance of the study of the history of the United States.
 It is argued that the study of the history of the United
 States is essential for a full understanding of the present.
 The fifth part of the paper discusses the importance of the
 study of the history of the United States. It is argued that
 the study of the history of the United States is essential
 for a full understanding of the present. The sixth part of
 the paper discusses the importance of the study of the
 history of the United States. It is argued that the study
 of the history of the United States is essential for a full
 understanding of the present. The seventh part of the
 paper discusses the importance of the study of the history
 of the United States. It is argued that the study of the
 history of the United States is essential for a full
 understanding of the present. The eighth part of the
 paper discusses the importance of the study of the history
 of the United States. It is argued that the study of the
 history of the United States is essential for a full
 understanding of the present. The ninth part of the
 paper discusses the importance of the study of the history
 of the United States. It is argued that the study of the
 history of the United States is essential for a full
 understanding of the present. The tenth part of the
 paper discusses the importance of the study of the history
 of the United States. It is argued that the study of the
 history of the United States is essential for a full
 understanding of the present.

RAILROAD UNEMPLOYMENT INSURANCE ACT

RAILROAD UNEMPLOYMENT INSURANCE ACT

(As amended through 1976)

AN ACT To regulate interstate commerce by establishing an unemployment insurance system for individuals employed by certain employers engaged in interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term “employer” means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the causal operation of equipment or facilities) in connection with the transportation of passengers or property by railroad or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term “employer” shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term “employer” shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and by-laws of such organizations. The term “employer” shall not include any com-

(493)

pany by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tippie, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part 1 of the Interstate Commerce Act.

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been

(i) in the service of one or more employers for compensation, or (ii) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1(a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tippie, or the loading of coal at the tippie.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clause (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the juris-

diction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further*, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside of the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in section 1(a) who before or after August 29, 1935, was in the service of an employer as defined in section 1(a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(g) The term "employment" means service performed as an employee. For the purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this Act, employment after June 30, 1940, in the service of a local lodge or division of a railway-labor-organization employer or as an employee representative shall be disregarded. For purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this Act, employment as a delegate to a national or international convention of a railway labor organization defined as an "employer", in subsection (a) of this section, shall be disregarded if the individual having such employment has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.¹

(h) The term "registration period" means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office.

¹ As amended by Public Law 746, 83d Cong., 2d sess., 1954. An effect of this subsection is to cause an employee of a local lodge or division and an employee representative, with respect to employment after June 30, 1940, not to be a "qualified employee" under section 3 and not be subject to the provisions of section 8 as to contribution.

The term "registration period" means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 2(a) of this Act) is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a "period of continuing sickness" (as defined in section 2(a) of this Act) was filed in his behalf, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day with respect to which a statement of sickness for a new "period of continuing sickness" (as defined in section 2(a) of this Act) is filed in his behalf.

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee, no part of any month's compensation in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before the calendar month next following the month in which this Act was amended in 1959, or in excess of \$400 for any month after the month in which this Act was so amended, shall be recognized. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a non-immigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 6 of this Act, the period during which such compensation will have been earned.

(j) The term "remuneration" means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term "remuneration" includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term "remuneration" does not include (i) the voluntary payment by another, without deduction from the pay of an employee, of any tax or contribution now or hereafter imposed with respect to the remuneration of such employee, or (ii) any money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

(k) Subject to the provisions of section 4 of this Act, (1) a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; (2) a "day of sickness", with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: *Provided, however*, That "subsidiary remuneration", as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection except with respect to an employee whose base-year compensation, exclusive of earnings from the position or occupation in which he earned such subsidiary remuneration, is less than \$1,000: *Provided further*, That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days: *Provided further*, That any calendar day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness.

For the purpose of this subsection, the term "subsidiary remuneration" means, with respect to any employee, remuneration not in excess of an average of \$10 a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(1) (1) The term "benefits" (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this Act, with respect to his unemployment or sickness.

(1) (2) The term "statement of sickness" means a statement with respect to days of sickness of an employee, executed in such manner and form by an individual duly authorized pursuant to section 12(i) to execute such statements, and filed as the Board may prescribe by regulations.

(m) The term "benefit year" means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June.

(n) The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year.

(o) The term "employment office" means a free employment office operated by the Board, or designated as such by the Board pursuant to section 12(i) of this Act.

(p) The term "account" means the railroad unemployment insurance account established pursuant to section 10 of this Act in the unemployment trust fund.

(q) The term "fund" means the railroad unemployment insurance administration fund, established pursuant to section 11 of this Act in the unemployment trust fund.

(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States and the District of Columbia.

(t) The term "State" means any of the States or the District of Columbia.

(u) Any reference in this Act to any other Act of Congress, including such reference in amendments to other Acts, includes a reference to such other Acts as amended from time to time.

BENEFITS

SEC. 2. (a) Benefits shall be payable to any qualified employee for each day of unemployment in excess of four during any registration period: *Provided, however,* That notwithstanding the provisions of section 1(h) of this Act, in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, other than a strike subject to the disqualification in section 4(a-2) (iii), none of the first seven days of unemployment due to such stoppage of work shall be included in any registration period; and subject to the registration provisions of section 1(h), so many of the ensuing seven consecutive calendar days during which his unemployment continues to be caused by such stoppage of work shall constitute a registration period, during which benefits shall be payable for each day of unemployment. Benefits shall be payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, but excluding four days of sickness in any registration period. A period of continuing sickness means (i) a period of consecutive days of sickness, whether from one or more

causes, or (ii) a period of successive days of sickness due to a single cause without interruption of more than ninety consecutive days which are not days of sickness.

The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than \$12.70: *Provided, however*, That for registration periods beginning after June 30, 1975, but before July 1, 1976, such amount shall not exceed \$24 per day of such unemployment or sickness and that for registration periods beginning after June 30, 1976, such amount shall not exceed \$25 per day of such unemployment or sickness. The daily rate of compensation referred to in this paragraph shall be determined by the Board on the basis of information furnished to the Board by the employee, his employer, or both.

In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period.

(b) The benefits provided for in this section shall be paid to an employee at such reasonable intervals as the Board may prescribe.

(c) The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be one hundred and thirty: *Provided, however*, That the total amount of benefits which may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits which may be paid to an employee for days of sickness within a benefit year shall in no case exceed the employee's compensation in the base year except that notwithstanding the provisions of section 1(i) of this Act, in determining the employee's compensation in the base year for purposes of this proviso and the second proviso of this subsection, any money remuneration paid to the employee for services rendered as an employee not in excess of \$775 in any month shall be taken into account: *Provided further*, That, with respect to an employee who has less than ten years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment in a benefit year but has exhausted such rights, the maximum number of days of, and amount of payment for, unemployment within such benefit year (as extended by the provisions of subsection (h) of this section) for which benefits may be paid shall be enlarged, but not by more than sixty-five days, to include all compensable days of unemployment within an extended benefit period determined pursuant to the provisions of subsection (h) of this section, but the total amount of benefits which may be paid to an employee for days of unemployment within such extended benefit period shall in no case exceed 50 per centum of the employee's compensation in the base year: *And provided further*, That, with respect to an employee who has ten or more years of service as defined in section 1(f) of the Railroad Retirement Act of 1974, who did not voluntarily retire and (in a case involving exhaustion of rights to benefits for days of unemployment) did not voluntarily leave

work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under the following schedule, and the maximum number of days of, and amount of payment for, unemployment or sickness (depending on the type of benefit rights exhausted) within such benefit year for which benefits may be paid to the employee shall be enlarged to include all compensable days of unemployment or days of sickness, as the case may be, within such extended benefit period:

If the employee's "years of service" total—	<i>The extended benefit period shall begin on the first day of unemployment or sickness, as the case may be, following the day on which the employee exhausted his then current rights to normal benefits for days of unemployment or days of sickness and shall continue for successive fourteen-day periods (each of which periods shall constitute a registration period) until the number of such fourteen-day periods totals—</i>
10 and less than 15.....	7 (but not more than 65 days)
15 and over.....	13

but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 3 of this Act on the basis of compensation earned after the first of such successive fourteen-day periods has begun. For an employee who has ten or more years of service, who did not voluntarily retire and (in a case involving unemployment) did not voluntarily leave work without good cause, who has fourteen or more consecutive days of unemployment, or fourteen or more consecutive days of sickness, and who is not a "qualified employee" for the general benefit year current when such unemployment or sickness commences but is or becomes a "qualified employee" for the next succeeding general benefit year, such succeeding benefit year shall, in his case, begin on the first day of the month in which such unemployment or sickness commences. Notwithstanding the other provisions of this subsection, an extended benefit period for sickness benefits shall terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of the payment of unemployment benefits; and, in the case of a succeeding benefit year beginning in accordance with the next preceding sentence by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the day on which age 65 is attained and continuing through the day preceding the first day of the next succeeding general benefit year. For purposes of this subsection, the Board may rely on evidence of age available in its records and files at the time determinations of age are made.

(d) If the Board finds that at any time more than the correct amount of benefits has been paid to any individual under this Act or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) recovery by adjustments in subsequent payments to which such individual is entitled under this Act or any other Act administered by the Board may, except as otherwise

provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this Act or any other Act administered by the Board to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case recovery shall be deemed to have been completed upon such recertification.

There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this Act or would be against equity or good conscience.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection.

(e) Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

(f) If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness, and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 8 of this Act with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section.

(g) Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same individual or individuals to whom any accrued annuities under section 6(a)(1) of the Railroad Retirement Act of 1974 are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 6(a)(1) of the Railroad Retirement Act of 1974 if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be paid in accordance with the foregoing provision, such benefits or part thereof shall escheat to the credit of the account.

(h)(1) For purposes of the second proviso of subsection (c) of this section, an extended benefit period, with respect to an employee, shall begin on the first day of unemployment within a period of high unemployment following the day on which the employee exhausted his then current rights to normal benefits for unemployment and shall continue for seven successive fourteen-day periods (each of which periods shall constitute a registration period). If the general benefit year in which an employee's extended benefit period began ends within such extended benefit period, such benefit year shall, in the case of such employee, be deemed not to be ended until the last day of the extended benefit period. If an employee unemployed within a period of high unemployment is not a "qualified employee" for the general benefit year then current but was a "qualified employee" for the preceding general benefit year, such preceding general benefit year shall, for purposes of the second proviso of subsection (c) of this section, in the case of such employee, be deemed not to be ended until the last day of such employee's extended benefit period determined pursuant to the provisions of this subsection.

(2) For purposes of subdivision (1) of this subsection, a "period of high employment" shall begin with the twentieth day after whichever of the following first occurs: (A) there is a national "on" indicator as defined in section 203(d) of Public Law 91-373, as amended, or (B) a period of three consecutive calendar months in which, for each month included in such period, the rate of railroad unemployment (seasonally adjusted) equalled or exceeded the lowest applicable unemployment rate specified for the national "on" indicator in section 203(d) of Public Law 91-373, as amended, and shall end with the twentieth day after both of the following occur: (A) there is a national "off" indicator as defined in section 203(d) of Public Law 91-373, as amended, and (B) a period of three consecutive calendar months, in which, for each month included in such period, the rate of railroad unemployment (seasonally adjusted) was less than the lowest applicable unemployment rate specified for the national "off" indicator in section 203(d) of Public Law 91-373, as amended.

(3) For purposes of subdivision (2) of this subsection, the term "rate of railroad unemployment" for a month means the percentage arrived at by dividing (A) the average weekly number of individuals who filed bona fide claims for benefits for days of unemployment in such month, excluding from such number those individuals whose

unemployment was due to a stoppage of work because of a strike, lock-out, or other labor dispute, by (B) the average midmonth count of employees of class I railroads and class I switching and terminal companies, as reported to the Interstate Commerce Commission, adjusted, as determined by the Board, to include all employees covered by this Act for the twelve months ending with the second calendar quarter preceding such month.

(4) Determinations under this subsection shall be made by the Board in accordance with regulations prescribed by it. When a determination has been made that a "period of high unemployment" is beginning or ending, the Board shall cause notice of such determination to be published in the Federal Register. The Board shall also cause to be published in the Federal Register the formula which it uses to adjust the mid-month count of employees of class I railroads and class I switching and terminal companies to include all employees covered by this Act, and the formula it uses to make seasonal adjustments in the rate of railroad unemployment.

QUALIFYING CONDITION

SEC. 3. An employee shall be a "qualified employee" if the Board finds that his compensation will have been not less than \$1,000 with respect to the base year, and, if such employee has had no compensation prior to such year, that he will have had compensation with respect to each of not less than five months in such year.²

DISQUALIFYING CONDITIONS

SEC. 4. (a-1) There shall not be considered as a day of unemployment or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall

² As amended by Public Law No. 141. 76th Cong., 1st sess., 1939; Public Law No. 833. 76th Cong., 3d sess., 1940; Public Law 572. 79th Cong., 2d sess., 1946; Public Law 343. 82d Cong., 2d sess., 1952; Public Law 746. 83d Cong., 2d sess., 1954; Public Law 86-28. 1959; Public Law 88-133. 1963. Section 1(g) causes an employee of a local lodge or division and an employee representative not to be a "qualified employee" with respect to employment after June 30, 1940; and Public Law 90-257, 1968.

be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;

(a-2) There shall not be considered as a day of unemployment with respect to any employee—

(i) (A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than \$1,000 with respect to time after the beginning of such period;

(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this Act, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 9(a) of this Act;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act or in violation of the established rules and practices of a bona fide labor organization of which he was a member.

(b) The disqualification provided in section 4(a-2)(iii) of this Act shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: *Provided*, That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be deemed to be a separate establishment, enterprise, or other premises.

(c) No work shall be deemed suitable for the purposes of section 4(a-2)(ii) of this Act, and benefits shall not be denied under this Act to any otherwise qualified employee for refusing to accept work if—

(i) the position offered is vacant due directly to a strike, lock-out, or other labor dispute;

(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, by-laws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employer.

(d) In determining, within the limitations of section 4(c) of this Act, whether or not any work is suitable for an employee for the purposes of section 4(a-2)(ii) of this Act, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi)

the distance of the available work from his residence and from his most recent work.

(e) For the purposes of section 4(a-2) (i) of this Act, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of section 4(a-2) (ii) of this Act.

CLAIMS FOR BENEFITS

SEC. 5. (a) Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits.

(c) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto.

Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded the benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this Act but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the

Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceedings and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

Final decision of the Board in the cases provided for in the preceding two paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this Act, of every party notified as hereinabove provided of his right to participate in the proceedings.

Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f).

(d) The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) In any proceeding other than a court proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall

be communicated to the parties within fifteen days after the date of such final determination.

(f) Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forthwith be served upon the Board or any officer designated by it for such purpose. Service may be made upon the Board by registered mail addressed to the Chairman. Within fifteen days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by a law to precedence. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpected funds in the account are available for the payment of any claim for benefits or refund under this Act, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States,

and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year.

CONCLUSIVENESS OF RETURNS OF COMPENSATION AND OF FAILURE TO MAKE RETURNS OF COMPENSATION

SEC. 6. Employers shall file with the Board, in such manner and at such times as the Board by regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall distribute to employees annual statements of compensation: *Provided*, That no returns shall be required of employers which would duplicate information contained in similar returns required under any other Act of Congress administered by the Board. The Board's record of the compensation so returned shall, for the purpose of determining eligibility for and the amount of benefits, be conclusive as to the amount of compensation paid to an employee during the period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall, for the purposes of determining eligibility for and the amount of benefits, be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation in the one case, or failure to make or record return of the compensation in the other case, is called to the attention of the Board within eighteen months after the date on which the last return covering any portion of the calendar year which includes such period is required to have been made.

FREE TRANSPORTATION

SEC. 7. It shall not be unlawful for carriers to furnish free transportation to employees qualified for benefits or serving waiting periods under this Act.

CONTRIBUTION

SEC. 8. (a) Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined as set forth below of so much of the compensation as is not in excess of \$300 for any calendar month paid by him to any employee for

services rendered to him after June 30, 1939, and before July 1, 1954, and is not in excess of \$350 for any calendar month paid by him to any employee for services rendered to him after June 30, 1954, and before June 1, 1959, and is not in excess of \$400 for any calendar month paid by him to any employee for services rendered to him after May 31, 1959: *Provided, however,* That if compensation is paid to an employee by more than one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than \$300 for any month before July 1, 1954, and to not more than \$350 for any month after June 30, 1954, and before June 1, 1959, and to not more than \$400 for any month after May 31, 1959, of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than \$300 if such month is before July 1, 1954, or less than \$350 if such month is after June 30, 1954, and before June 1, 1959, or less than \$400 if such month is after May 31, 1959, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

1. With respect to compensation paid prior to January 1, 1948, the rate shall be 3 per centum;

2. With respect to compensation paid after the month in which this Act was amended in 1959, the rate shall be as follows:

If the balance to the credit of the railroad unemployment insurance account as of the close of business on September 30 of any year, as determined by the Board, is:	<i>The rate with respect to compensation paid during the next succeeding calendar year shall be:</i>	<i>Percent</i>
\$300,000,000 or more-----		0.5
\$200,000,000 or more but less than \$300,000,000-----		4.0
\$100,000,000 or more but less than \$200,000,000-----		5.5
\$50,000,000 or more but less than \$100,000,000-----		7.0
Less than \$50,000,000-----		8.0

As soon as practicable following the enactment of this Act, the Board shall determine and proclaim the balance to the credit of the account as of the close of business on September 30, 1947, and on or before December 31 of 1948 and of each succeeding year, the Board shall determine and proclaim the balance to the credit of the account as of the close of business on September 30, of such year; and in determining such balance as of September 30 of any year, the balance to the credit of the railroad unemployment insurance administration

fund as of the close of business on such date shall be deemed to be a part of the balance to the credit of such account.³

(b) Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month after December 1975 as is not, for any such calendar month, in excess of \$400, at the rate applicable to employers in accordance with subsection (a) of this section. The compensation of an employee representative and the contribution with respect thereto shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this Act.⁴

(c) In the payment of any contribution under this Act, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(d) If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation, then, under regulations prescribed under this Act by the Board, proper adjustments with respect to the contribution shall be made, without interest, in connection with subsequent contribution payments made under this Act by the same employer or employee representative.

(e) If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation and the overpayment or underpayment of the contribution cannot be adjusted under subsection (d) of this section, the amount of the overpayment shall be refunded from the account, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board.

(f) The contributions required by this Act shall be collected by the Board and shall be deposited by it with the Secretary of the Treasury of the United States, such part thereof as equals 0.25 per centum of the total compensation on which such contributions are based to be deposited to the credit of the fund and the balance to be deposited to the credit of the account.

(g) The contributions required by this Act shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this Act as may be prescribed by regulations of the Board, and shall not be deducted, in whole or in part, from the compensation of employees in the employer's employ. If a contribution required by this Act is not paid when due, there shall be added to the amount payable (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 1 per centum per month or fraction of a month from the date the contribution became due until paid. Any interest collected pursuant to this subsection shall be credited to the account.

(h) All provisions of law, including penalties, applicable with respect to any tax imposed by the provisions of the Railroad Retirement

³ As amended by Public Law 744, 80th Cong., 2d sess., 1948; Public Law 85-927, 1958; Public Law 86-28, 1959; and Public Law 88-133, 1963. An employee of a local lodge or division is removed by section 1(g) from the provisions of this subsection as to employment after June 30, 1940.

⁴ As amended by Public Law 746, 83d Cong., 2d sess., 1954; Public Law 86-28, 1959; and Public Law 89-700, 1966. An employee representative is removed by section 1(g) from the provisions of this subsection as to employment after June 30, 1940.

Tax Act, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the contributions required by this Act: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor.

PENALTIES

SEC. 9. (a) Any officer or agent of an employer, or any employee representative, or any employee acting in his own behalf, or any person whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required by the Board in the administration of this Act, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purposes of this Act, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this Act, shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

(b) Any agreement by an employee to pay all or any portion of the contribution required of his employer under this Act shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such contribution. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall be punished for each such violation by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

(c) Any person who violates any provision of this Act, the punishment for which is not otherwise provided, shall be punished for each such violation by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

(d) All fines and penalties imposed by a court pursuant to this Act shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account.

RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 10. (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance account. This account shall consist of (i) such part of all contributions collected pursuant to section 8 of this Act as is in excess of 0.5 per centum of the total compensation on which such contributions are based, together with all interest collected pursuant to section 8(g) of this Act; (ii) all amounts transferred or paid into the account pursuant to section 13 or section 14 of this Act; (iii) all additional amounts appropriated to the account in accordance with any provision of this Act or with any provision of law now or hereafter

adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 904(e) of the Social Security Act; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 11 of this Act; (vii) all fines or penalties collected pursuant to the provisions of this Act; and (viii) all amounts credited thereto pursuant to section 2(f) or section 12(g) of this Act. Notwithstanding any other provision of law, all moneys credited to the account shall be mingled and undivided, and are hereby permanently appropriated to the Board to be continuously available to the Board without further appropriation, for the payment of benefits and refunds under this Act, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund.

(b) All moneys in the account shall be used solely for the payment of the benefits and refunds provided for by this Act. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this Act, the amount of such payment, and the time at which it shall be made. Prior to audit or settlement by the General Accounting Office, the Secretary of the Treasury, through the Division of Disbursements of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board: *Provided, however,* That if the Board shall so request, the Secretary of the Treasury, through the Division of Disbursements of the Treasury Department, shall transmit benefits payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper.

(c) The Board shall include in its annual report to Congress a statement with respect to the status and operation of the account.

(d) Whenever the Board finds at any time that the balance in the railroad unemployment insurance account will be insufficient to pay the benefits and refunds which it estimates are due, or will become due, under this Act, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such moneys as the Board estimates would be necessary for the payment of such benefits and refunds, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the railroad unemployment insurance account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such benefits and refunds, it shall request the Secretary of the Treasury to retransfer from the railroad unemployment insurance account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such benefits and refunds, plus interest at a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer. In determining the balance in the railroad unemployment insurance account as of September 30 of any year pursuant to section 8(a) of this Act, any moneys transferred from the Railroad Retirement Account to the credit of the railroad unemployment insur-

ance account which have not been retransferred as of such date from the latter account to the credit of the former, plus the interest accrued thereon to that date, shall be disregarded.

(e) Section 904(a) of the Social Security Act is hereby amended to read as follows: "There is hereby established in the Treasury of the United States a trust fund to be known as the 'unemployment trust fund', hereinafter in this title called the 'fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury or with any Federal Reserve Bank or member bank of the Federal Reserve System designated by him for such purpose."

(f) Section 904(e) of the Social Security Act is hereby amended to read as follows: "The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund, and shall credit quarterly on March 31, June 30, September 30 and December 31, of each year, to each account on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date."

(g) Section 904(f) of the Social Security Act is hereby amended by adding thereto the following sentence: "The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment."

RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 11. (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 8 of this Act as equals 0.5 per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this Act. Such additional amounts are hereby authorized to be appropriated.

(b) In addition to the other moneys herein provided for expenses necessary or incidental to administering this Act, there is hereby

appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this Act, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public, Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is hereby directed to advance to the credit of the fund such sums, but not more than \$2,000,000 as the Board requests for the purpose of financing the cost of administering this Act. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the funds as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

(c) Notwithstanding any other provision of law, all moneys at any time credited to the fund are hereby permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this Act, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed \$10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special technical or professional service, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5) and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services; advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and labor-saving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 192 of the Revised Statutes; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be

made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Civil Service Commission of persons eligible to be employed by the Board, and to the extent that the Board finds such expedition necessary, meeting the expenses of the Civil Service Commission in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 12(1) of this Act, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided*, That section 3709 of Revised Statutes (U.S.C., title 41, sec. 5) shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed \$300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1974 is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Act, or of this Act, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner.

(d) So much of the balance in the fund as of June 30 of each year as is in excess of \$6,000,000 shall as of such date be transferred from the fund and credited to the account.

DUTIES AND POWERS OF THE BOARD

SEC. 12. (a) For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this Act, the Board shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof. Any member of the Board or any of its employees or representatives designated by it may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and production of evidence may be required from any place in the United States or any Territory or possession thereof at any designated place of hearing. All subpoenas may be served and returned by any one authorized by the Board in the same manner as is now provided by law for the service and return by United States marshals of subpoenas in suits in equity. Such service may also be made by registered mail and in such case the return post-office receipt shall be proof of service. Witnesses summoned in accordance with this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(b) In case of contumacy by, or refusal to obey a subpoena lawfully issued to, any person, the Board may invoke the aid of the district court of the United States or the United States courts of any

Territory or possession, where such person is found or resides or is otherwise subject to service of process; or the District Court of the United States for the District of Columbia if the investigation or proceeding is being carried on in the District of Columbia, or the District Court of the United States for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois, in requiring the attendance and testimony of witnesses and the production of evidence. Any such court shall issue an order requiring such person to appear before the Board or its specified employee or representative at the place specified in the subpoena of the Board, whether within or without the judicial district of the court, there to produce evidence, if so ordered, or there to give testimony concerning the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. All orders, writs, and processes in any such proceeding may be served in the judicial district of the district court issuing such order, writ, or process, except that the orders, writs, and processes of the District Court of the United States for the District of Columbia or of the District Court of the United States for the Northern District of Illinois in such proceedings may run and be served anywhere in the United States.

[(c) Repealed by Public Law 91-452, 1970.]

(d) Information obtained by the Board in connection with the administration of this Act shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: *Provided, however*, That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this Act; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; and (iii) any claimant of benefits under this Act shall, upon his request, be supplied with information from the Board's records pertaining to his claim. Subject to the provisions of this section, the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 11(a) of this Act.

(e) The Board shall provide for the certification of claims for benefits and refunds and may arrange total or partial settlements at such times and in such manner as may appear to the Board to be expedient. The Board shall designate and authorize one or more of its employees to sign vouchers for the payment of benefits and refunds under this Act. Each such employee shall give bond, in form and amount fixed by the Board, conditioned upon the faithful performance of his duties. The premiums due on such bonds shall be paid from the fund and deemed to be part of the expenses of administering this Act.

(f) The Board may cooperate with or enter into agreement with the appropriate agencies charged with the administration of State, Territorial, Federal, or foreign unemployment-compensation or sickness laws or employment offices, with respect to investigations, the ex-

change of information and services, the establishment, maintenance, and use of free employment service facilities, and such other matters as the Board deems expedient in connection with the administration of this Act, and may compensate any such agency for services or facilities supplied to the Board in connection with the administration of this Act. The Board may enter also into agreements with any such agency, pursuant to which any unemployment or sickness benefits provided for by this Act or any other unemployment-compensation or sickness law, may be paid through a single agency to persons who have, during the period on the basis of which eligibility for and duration of benefits is determined under the law administered by such agency or under this Act, or both, performed services covered by one or more of such laws, or performed services which constitute employment as defined in this Act: *Provided*, That the Board finds that any such agreement is fair and reasonable as to all affected interests.

(g) In determining whether an employee has qualified for benefits in accordance with section 3 of this Act, and in determining the amounts of benefits to be paid to such employee in accordance with sections 2(a) and 2(c) of this Act, the Board is authorized to consider as employment (and compensation therefor) services for hire other than employment (and remuneration therefor) if such services for hire are subject to an unemployment or sickness compensation law of any State, provided that such State has agreed to reimburse the United States such portion of the benefits to be paid upon such basis to such employee as the Board deems equitable. Any amounts collected pursuant to this paragraph shall be credited to the account.

If a State, in determining whether an employee is eligible for unemployment or sickness benefits under an unemployment or sickness compensation law of such State, and in determining the amount of unemployment or sickness benefits to be paid to such employee pursuant to such unemployment or sickness compensation law, considers as services for hire (and remuneration therefor) included within the provisions of such unemployment or sickness compensation law, employment (and compensation therefor), the Board is authorized to reimburse such State such portion of such unemployment or sickness benefits as the Board deems equitable; such reimbursements shall be paid from the account, and are included within the meaning of the word "benefits" as used in this Act.

(h) The Board may enter into agreements or arrangements with employers, organizations of employers, and railway-labor organizations which are duly organized in accordance with the provisions of the Railway Labor Act, for securing the performance of services or the use of facilities in connection with the administration of this Act, and may compensate any such employer or organization therefor upon such reasonable basis as the Board shall prescribe, but not to exceed the additional expense incurred by such employer or organization by reason of the performance of such services or making available the use of such facilities pursuant to such agreements or arrangements. Such employers and organizations, and persons employed by either of them, shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1).

(i) The Board may establish, maintain, and operate free employment offices, and may designate as free employment offices facilities

maintained by (i) a railway labor organization which is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or (ii) any other labor organization which has been or may be organized in accordance with the provisions of the Railway Labor Act, or (iii) one or more employers, or (iv) an organization of employers, or (v) a group of such employers and labor organizations, or (vi) a State, Territorial, foreign, or the Federal Government. The Board may also enter into agreements or arrangements with one or more employers or railway labor organizations organized in accordance with the provisions of the Railway Labor Act, pursuant to which notice of the availability of work and the rights of employees with respect to such work under agreements between such employers and railway labor organizations may be filed with employment offices and pursuant to which employees registered with employment offices may be referred to such work.

The Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration affording substantial evidence of the days of unemployment of the employees who register. The Board may, when such registration is made personally by an employee, accept such registration as initial proof of unemployment sufficient to certify for payment a claim for benefits.

The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designed with a view to having such statements provide substantial evidence of the days of sickness of the employee. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits.

The regulations of the Board concerning registration at employment offices by unemployed persons may provide for group registration and reporting, through employers, and need not be uniform with respect to different classes of employees.

The operation of any employment facility operated by the Board shall be directed primarily toward the reemployment of employees who have therefore been substantially employed by employers.

(j) The Board may appoint national or local advisory councils composed of equal numbers of representatives of employers, representatives of employees, and persons representing the general public, for the purpose of discussing problems in connection with the administration of this Act and aiding the Board in formulating policies. The members of such councils shall serve without remuneration, but shall be reimbursed for any necessary traveling and subsistence expenses or on a per diem basis in lieu of subsistence expenses.

(k) The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate steps to reduce and prevent

unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

(1) In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this Act, and in connection therewith shall have such of the powers, duties, and remedies provided in subdivisions (5), (6), and (9) of section 7(b) of the Railroad Retirement Act of 1974, with respect to the administration of said Act, as are not inconsistent with the express provisions of this Act. A person in the employ of the Board under section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness as the Civil Service Commission may prescribe. A person in the employ of the Board on June 30, 1939, and on June 30, 1940, and who has had experience in railroad service, shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Civil Service Commission, he shall pass such noncompetitive tests of fitness for the position for which the Board recommends him as the Civil Service Commission may prescribe.

The Board may employ such persons and provide for their remuneration and expenses, as may be necessary for the proper administration of this Act. Such persons shall be employed and their remuneration prescribed in accordance with the civil-service laws and the Classification Act of 1949, as amended: *Provided*, That all positions to which such persons are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom: *Provided*, That in the employment of such persons the Board shall give preference, as between applicants attaining the same grades, to persons who have had experience in railroad service, and notwithstanding any other provisions of law, rules, or regulations, no other preferences shall be given or recognized: *And provided further*, That certification by the Civil Service Commission of persons for appointment to any positions at minimum salaries of \$4,600 per annum, or less, shall, if the Board so requests, be upon the basis of competitive examinations, written, oral or both, as the Board may request: *And provided further*, That, for the purpose of registering unemployed employees who reside in areas in which no employer facilities are located, or in which no employer will make facilities available for the registration of such employees, the Board may, without regard to civil-service laws and the Classification Act of 1923, appoint persons to accept, in such areas, registration of such employees and perform services incidental thereto and may compensate such persons on a piece-rate basis to be determined by the Board. Notwithstanding the provisions of the Act of June 22, 1906 (34 Stat. 449), or any other provision of law, the Board may detail employees from stations outside the District of Columbia to other stations outside the District of Columbia or to service in the District of Columbia, and may detail employees in the District of Columbia to service outside the District of Columbia: *Provided*, That all details

hereunder shall be made by specific order and in no case for a period of time exceeding one hundred and twenty days. Details so made may, on expiration, be renewed from time to time by order of the Board, in each particular case, for periods not exceeding one hundred and twenty days.

(m) The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this Act, excluding only the power to prescribe rules and regulations.

(n) Any employee claiming, entitled to, or receiving sickness benefits under this Act may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness benefits shall be payable under this Act with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee, upon which a claim or right to benefits under this Act is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness benefits under this Act shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness period upon which such application is based: *Provided*, That such information shall not be disclosed by the Board except in a court proceeding relating to any claims for benefits by the employee under this Act.

The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness benefits under this Act and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to the Act of Congress approved March 3, 1917 (39 Stat. 1106, ch. 163, sec. 1). In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

(o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suits, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity,

to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

(p) The Board may, after hearing, disqualify any person from executing statements of sickness who the Board finds. (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefit under this Act, or (iii) will have failed to submit medical reports and records required by the Board under this Act, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this Act or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

(q) The Board shall engage in and conduct research projects, investigations, and studies with respect to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies.

EXCLUSIVENESS OF PROVISIONS; TRANSFERS FROM STATE UNEMPLOYMENT COMPENSATION ACCOUNTS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

SEC. 13. (a) Effective July 1, 1939, section 907(c) of the Social Security Act is hereby amended by substituting a semicolon for the period at the end thereof, and by adding: "(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act.".

(b) By enactment of this Act the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this Act). No employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this Act). The Congress finds and declares that by virtue of the enactment of this Act, the application of State unemployment compensation laws after June 30, 1939, or of State sickness laws after June 30, 1947, to such employment, except pursuant to section 12(g) of this Act, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate

commerce. In furtherance of such determination, after June 30, 1939, the term "person" as used in section 906 of the Social Security Act shall not be construed to include any employer (as defined in this Act) or any person in its employ: *Provided*, That no provision of this Act shall be construed to affect the payment of unemployment benefits with respect to any period prior to July 1, 1939, under an unemployment compensation law of any State based upon employment performed prior to July 1, 1939, and prior to such date employment as defined in this Act shall not constitute "Service with respect to which unemployment compensation is payable under an [or "service under any"] unemployment compensation system [or "plan"] established by an Act of Congress" [or "a law of the United States"] or "employment in interstate commerce, of an individual who is covered by an unemployment compensation system established directly by an Act of Congress," or any term of similar import, used in any unemployment compensation law of any State.

(c) The Social Security Board is hereby directed to determine for each State, after agreement with the Railroad Retirement Board, and after consultation with such State; the total (hereinafter referred to as the "preliminary amount") of (i) the amount remaining as the balances of reserve accounts of employers as of June 30, 1939, if the unemployment compensation law of such State provides for a type of fund known as "Reserve Accounts", plus (ii) if the unemployment compensation law of such State provides for a type of fund known as "Pooled Fund" or "Pooled Account", that proportion of the balance of such fund or account of such State as of June 30, 1939, as the amount of taxes or contributions collected from employers and their employees prior to July 1, 1939, pursuant to its unemployment compensation law and credited to such fund or account bears to all such taxes or contributions theretofore collected from all persons subject to its unemployment compensation law and credited to such fund or account; and the additional amounts (hereinafter referred to as the "liquidating amount") of taxes or contributions collected from employers and their employees from July 1, 1939 to December 31, 1939, pursuant to its unemployment compensation law.

(d) The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 302(a) of the Social Security Act to be necessary for the proper administration of each State's unemployment-compensation law, until an amount equal to its "preliminary amount" plus interest from July 1, 1939, at $2\frac{1}{2}$ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment, has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this Act, and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "preliminary amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 302(a) of the Social Security Act to be necessary for the proper administration of each State's unemployment compensation law, until an amount equal to its "liquidating amount" plus interest from January 1, 1940, at $2\frac{1}{2}$ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment has been so withheld from certification pursuant to this paragraph: *Provided, however,* That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this Act, and (ii) January 1, 1940, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "liquidating amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The withholdings from certification directed in each of the foregoing paragraphs of this subsection shall begin with respect to each State when the Social Security Board finds that such State is unable to avail itself of the conditions set forth in the proviso contained in such paragraph: *Provided, however,* That if the Social Security Board finds with respect to any State that such State (1) is unable to avail itself of such conditions solely by reason of prohibitions contained in the constitution of such State, as determined by a decision of the highest court of such State declaring invalid in whole or in part the action of the legislature of the State purporting to provide for transfers from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account, and (2) for similar reasons is unable to use amounts withdrawn from its account in the Unemployment Trust Fund for the payment of expenses incurred in the administration of its State unemployment compensation law, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 302 of the Social Security Act and to certify to the Secretary of the Treasury for payment into the railroad unemployment insurance account the amount so withheld from such State until July 1, 1944, or until a date one hundred and eighty days after the adjournment of the first session of the legislature of such State beginning after July 1, 1942, whichever date is the earlier, and then only if the Social Security Board finds that such State had not prior thereto effectively authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account amounts equal to such State's "preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection, effectively authorized and directed the Secretary of the Treasury so to transfer, plus interest on such difference, if any, with respect to each amount at $2\frac{1}{2}$ per centum per annum from the date the State's "preliminary amount" or "liquidating amount", as the case may be, is determined by the Social Security Board; and with respect to any such State the amount withheld shall equal the State's

"preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection effectively authorized and directed the Secretary of the Treasury to transfer, plus interest from July 1, 1939, at $2\frac{1}{2}$ per centum per annum on so much of the "preliminary amount" and "liquidating amount", as the case may be, as has not been so transferred or has not been used as the measure for withholding. An enactment of any State legislature providing for the transfer (from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account) of all interest earned upon contributions which are collected with respect to employment occurring after such enactment by such State pursuant to its unemployment compensation law and credited to its account in the Unemployment Trust Fund (until the total of such transfers equals the amounts which otherwise would be required to be withheld from certification under this subsection), shall be deemed an effective authorization and direction to the Secretary of the Treasury as required by this subsection; and for purposes of computing the interest to be so transferred, amounts withdrawn by such State from its account in the Unemployment Trust Fund after the date of such State enactment shall be considered to be first charged against the amounts credited to such State's account prior to the date of such State enactment: *Provided, however*, That if at any time after such enactment the provision for transfer therein contained for any reason fails to be operative to effect the transfers of interest as therein prescribed, and such State has not otherwise made an effective authorization and direction to the Secretary of the Treasury as required by this subsection, the Social Security Board shall immediately after such failure or, on the date otherwise provided in this subsection for the beginning of withholdings from certification, whichever is later, begin to make the withholding from certification provided for in this subsection in the same manner and to the same extent as if such enactment by such State had not been enacted, except that the amounts of the certifications withheld shall be reduced by the total amount, if any, which has been transferred from interest pursuant to such enactment.

(e) The transfers described in the provisos contained in the several paragraphs of subsection (d) of this section shall not be deemed to constitute a breach of the conditions set forth in sections 303(a) (5) and 903(a) (4) of the Social Security Act; nor shall the withdrawal by a State from its account in the unemployment trust fund of amounts, but not to exceed the total amount the Social Security Board shall have withheld from certification with respect to such State pursuant to subsection (d) of this section, be deemed to constitute a breach of the conditions set forth in sections 303(a) (5) and 903(a) (4) of the Social Security Act, provided the moneys so withdrawn are expended solely for expenses which the Social Security Board determines to be necessary for the proper administration of such State's unemployment compensation law.

(f) The Social Security Board is authorized and directed to certify to the Secretary of the Treasury for payment, and the Secretary shall pay, into the railroad unemployment insurance account, such amounts as the Social Security Board withholds from certification pursuant to subsection (d) of this section and the appropriations authorized in

section 301 of the Social Security Act shall be available for payments authorized by this subsection. The Secretary shall transfer from the account of a State in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund such amounts as the State authorizes and directs him so to transfer pursuant to subsection (d) of this section.

(g) Section 303 of the Social Security Act is hereby amended by adding thereto the following additional subsection:

“(c) The Board shall make no certification for payment to any State if it finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

“(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

“(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.”

DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

SEC. 14. (a) Effective July 1, 1939, section 1(b) of the District of Columbia Unemployment Insurance Act is amended by substituting a semicolon for the period at the end thereof and by adding: “(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act.” This amendment shall not be construed to affect the payment of unemployment benefits at any time with respect to any period prior to July 1, 1939, based upon employment performed prior to July 1, 1939.

(b) The Secretary of the Treasury is authorized and directed to transfer from the account of the District of Columbia in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund, an amount equal to the “preliminary amount” and an amount equal to the “liquidating amount”, wherever such amounts, respectively, have been determined, with respect to the District of Columbia, pursuant to section 13 of this Act.

TRANSITIONAL PROVISIONS

SEC. 15. The restrictions in the second sentence of section 3(b) and in section 4(a) (v) of this Act, insofar as they involve the receipt of unemployment benefits under an unemployment compensation law of any State, shall not be applicable to any day of unemployment which occurs after June 15, 1939, but before July 1, 1939.

SEPARABILITY

SEC. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

RELATED MATERIALS

EXCERPTS FROM THE UNITED STATES CODE:

Safety Appliance Acts
Ash Pan Act
Locomotive Inspection Act
Block Signal Systems
Inspection and Testing of Railroad Cars and Appliances
Accident Reports Act



EXCERPTS FROM
UNITED STATES CODE
SAFETY APPLIANCE ACTS

TITLE 45—RAILROADS

**CHAPTER 1.—SAFETY APPLIANCES AND EQUIPMENT
ON RAILROAD ENGINES AND CARS, AND PROTECTION
OF EMPLOYEES AND TRAVELERS**

Sec.

1. Driving-wheel brakes and appliances for operating train-brake system.
2. Automatic couplers.
3. Refusal of insufficiently equipped cars from connecting lines.
4. Grab irons or handholds for security in coupling and uncoupling cars.
30. Powers and duties of inspectors, and provisions of certain sections applicable to all parts of locomotive and tender; examinations of inspectors.
31. Annual report of director.
32. Report by carrier to director as to accident; preservation of disabled parts; investigation and report thereupon.
33. Reports by commission of investigations.
34. Penalty for violations by carrier; duty of United States attorney to sue therefor; director to give information.
35. Investigation and report by commission on block-signal systems and appliances for automatic control of trains; evidence.
36. Investigation and testing by commission of appliances or systems to promote safety.
37. Inspection of mail cars.
38. Monthly reports of railroad accidents; duty of carrier to make.
39. Penalty for failure to make report.
40. Investigation by commission of accidents; cooperation with State commissions; reports of investigations.
41. Reports not evidence in suits for damages.
42. Form of reports.
43. Terms "interstate commerce" and "foreign commerce" defined.
44. Medals of honor for persons saving lives on railroads.
45. Rosettes and ribbons.
46. Payment of expenses.

¹ All functions, powers, and duties in the administration and enforcement of the provisions of law set forth in this appendix were transferred to the Secretary of Transportation by section 6 of the Department of Transportation Act.

§ 1. Driving-wheel brakes and appliances for operating train-brake system

It shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose. Mar. 2, 1893, c. 196, § 1, 27 Stat. 531.

§ 2. Automatic couplers

It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars. Mar. 2, 1893, c. 196, § 2, 27 Stat. 531.

§ 3. Refusal of insufficiently equipped cars from connecting lines

When any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section 1 of this title, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with said section, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by sections 1-7 of this title. Mar. 2, 1893, c. 196, § 3, 27 Stat. 531.

§ 4. Grab irons or handholds for security in coupling and uncoupling cars

Until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars. Mar. 2, 1893, c. 196, § 4, 27 Stat. 531.

§ 5. Standard height of drawbars for freight cars; noncomplying cars excluded from traffic

No freight cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the prescribed standard as to height of drawbars. Mar. 2, 1893, c. 196, § 5, 27 Stat. 531.

§ 6. Failure to equip cars as provided; duty of United States attorneys and Secretary of Transportation; exceptions from operation of provisions

Any common carrier engaged in interstate commerce by railroad using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the

provisions of sections 1-7 of this title, shall be liable to a penalty of not less than \$250 and not more than \$2,500 for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such United States attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Secretary of Transportation to lodge with the proper United States attorneys information of any such violations as may come to his knowledge: *Provided*, That nothing in sections 1-7 of this title shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs. As amended Aug. 14, 1957, Pub.L. 85-135, § 1(1), 71 Stat. 352.

§ 7. Assumption of risk by employees

Any employee of any common carrier engaged in interstate commerce by railroad who may be injured by any locomotive, car, or train in use contrary to the provision of sections 1-7 of this title shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge. Mar. 2, 1893, c. 196, § 8, 27 Stat. 532.

§ 8. Provisions of certain sections extended

The provisions and requirements of sections 1-7 of this title shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section 6 of this title, or which are used upon street railways. Mar. 2, 1903, c. 976, § 1, 32 Stat. 943.

§ 9. Power or train brakes; operation by engineer; rules for installation, inspection, maintenance, and repair

Whenever, as provided in sections 1-7 of this title, any train is operated with power or train brakes not less than 50 per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said 50 per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said sections, the Secretary of Transportation may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as afore-

said. One hundred and twenty days after the date of enactment of the Power or Train Brakes Safety Appliance Act of 1958, the Secretary of Transportation shall adopt and put into effect the rules, standards, and instructions of the Association of American Railroads, adopted in 1925 and revised in 1933, 1934, 1941, and 1953, with such revisions as may have been adopted prior to the enactment of such Act, for the installation, inspection, maintenance, and repair of all power or train brakes for common carriers engaged in interstate commerce by railroad. Such rules, standards, and instructions shall thereafter remain the rules, standards, and instructions for the installation, inspection, maintenance, and repair of all power or train brakes unless changed, after hearing, by order of the Secretary of Transportation: *Provided, however,* That such rules or standards or instructions or changes therein shall be promulgated solely for the purpose of achieving safety. The provisions and requirements of this section shall apply to all trains, locomotives, tenders, cars, and similar vehicles used, hauled, or permitted to be used or hauled, by any railroad engaged in interstate commerce. In the execution of this section, the Secretary of Transportation may utilize the services of the Association of American Railroads, and may avail itself of the advice and assistance of any department, commission, or board of the United States Government, and of State governments, but no official or employee of the United States shall receive any additional compensation for such service except as now permitted by law. Failure to comply with any rule, regulation, or requirement promulgated by the Secretary of Transportation pursuant to the provisions of this section shall be subject to the like penalty as failure to comply with any requirement of this section. As amended Apr. 11, 1958, Pub.L. 85-375, 72 Stat. 86.

§ 10. Former duties, requirements, and liabilities continued unless specifically amended

Nothing in sections 8 and 9 of this title shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of sections 1-7 of this title, and all of such provisions, powers, duties, requirements, and liabilities shall, except as specifically amended by sections 8 and 9 of this title, apply thereto. Mar. 2, 1903, c. 976, § 3, 32 Stat. 943; June 25, 1948, c. 646, § 1, 62 Stat. 909.

§ 11. Safety appliances required for each car; when hand brakes may be omitted

It shall be unlawful for any common carrier subject to the provisions of sections 11-16 of this title to haul, or permit to be hauled or used on its line, any car subject to the provisions of said sections not equipped with appliances provided for in said sections, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the tops of such ladders: *Provided,* That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the

cars while they are thus combined for such purpose. Apr. 14, 1910, c. 160, § 2, 36 Stat. 298.

§ 12. Safety appliances, as designated by commission, to be standards of equipment; modification of standard height of drawbars

The number, dimensions, location, and manner of application of the appliances provided for by sections 4 and 11 of this title as designated by the Interstate Commerce Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of sections 11-16 of this title, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of sections 11-16 of this title. Said commission is given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the commission. Apr. 14, 1910, c. 160, § 3, 36 Stat. 298.

§ 13. Penalty for using car not equipped as provided; hauling car for repairs where equipment becomes defective; liability for death or injury of employee; use of chains instead of drawbars

Any common carrier subject to sections 11-16 of this title using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of said sections not equipped as provided in said sections, shall be liable to a penalty of not less than \$250 and not more than \$2,500 for each and every such violation, to be recovered as provided in section 6 of this title: *Provided*, That where any car shall have been properly equipped, as provided in sections 1-16 of this title, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by this section or section 6 of this title, if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of sections 1-16 of this title; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in

revenue trains or in association with other cars that are commercially used, unless such defective cars contain livestock or "perishable" freight. As amended Aug. 14, 1957, Pub.L. 85-135, § 1(2), 71 Stat. 352.

§ 14. Liability for using car with defective equipment, except as specified

Except that, within the limits specified in section 13 of this title the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in sections 11-16 of this title shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements heretofore set out in sections 1-10 of this title; and, except as aforesaid, all of such provisions, powers, duties, requirements, and liabilities shall apply to sections 11-16 of this title. Apr. 14, 1910, c. 160, § 5, 36 Stat. 299.

§ 15. Enforcement by commission

It shall be the duty of the Interstate Commerce Commission to enforce the provisions of sections 11-16 of this title as to equipment of each car with safety appliances and all powers heretofore granted to said commission are extended to it for the purpose of such enforcement. Apr. 14, 1910, c. 160 § 6, 36 Stat. 299.

§ 16. Application of provisions to common carriers and vehicles subject to "Safety Appliance Acts"

The provisions of sections 11-16 of this title, as to the equipment of cars with the designated safety appliances apply to every common carrier and every vehicle subject to what are commonly known as the "Safety Appliance Acts" set out in sections 1-10 of this title. Apr. 14, 1910, c. 160, § 1, 36 Stat. 298.

*

*

*

*

*

*

*

TITLE 45—RAILROADS—Continued

* * * * *

ASH PAN ACT

§ 17. Locomotives to be equipped with safety ash pans

It shall be unlawful for any common carrier engaged in interstate or foreign commerce by railroad to use any locomotive in moving interstate or foreign traffic or for any common carrier by railroad in any Territory of the United States or the District of Columbia to use any locomotive, not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive. May 30, 1908, c. 225, §§ 1, 2, 35 Stat. 476.

§ 18. Penalty for violation, and actions therefor; duties of United States attorneys and of commission

Any such common carrier using any locomotive in violation of the provisions of section 17 of this title shall be liable to a penalty of \$200 for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such United States attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper United States attorneys information of any such violations as may come to its knowledge. May 30, 1908, c. 225, § 3, 35 Stat. 476; June 25, 1948, c. 646, § 1, 62 Stat. 909.

§ 19. Enforcement by commission

It shall be the duty of the Interstate Commerce Commission to enforce the provisions as to safety ash pans, and all powers heretofore granted to said commission are extended to it for the purpose of such enforcement. May 30, 1908, c. 225, § 4, 35 Stat. 476.

§ 20. Who included in term "common carrier"

The term "common carrier" as used in sections 17 and 18 of this title shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier, May 30, 1908, c. 225, § 5, 35 Stat. 476.

§ 21. Provisions not applicable to locomotives on which ash pan not necessary

Nothing in the provisions of sections 17-20 of this title, shall apply to any locomotive upon which, by reason of the use of oil, electricity, or other such agency, an ash pan is not necessary. May 30, 1908, c. 225, § 6, 35 Stat. 476.

LOCOMOTIVE INSPECTION ACT

§ 22. Inspection of locomotives and appurtenances; definitions

When used in sections 23-34 of this title, the terms "carrier" and "common carrier" mean a common carrier by railroad, or partly by

railroad and partly by water, within the continental United States, subject to the Interstate Commerce Act, as amended, excluding street, suburban, and interurban electric railways unless operated as a part of a general railroad system of transportation. The term "railroad" as used in said sections shall include all the roads in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and the term "employees" as used in said sections shall be held to mean persons actually engaged in or connected with the movement of any train. Feb. 17, 1911, c. 103, § 1, 36 Stat. 913; June 7, 1924, c. 355, § 1, 43 Stat. 659.

§ 23. Use of unsafe locomotives and appurtenances unlawful; inspection and tests

It shall be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, and unless said locomotive, its boiler, tender, and all parts and appurtenances thereof have been inspected from time to time in accordance with the provisions of sections 28-30 and 32 of this title and are able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for. Feb. 17, 1911, c. 103, § 2, 36 Stat. 913; Mar. 4, 1915, c. 169, § 1, 38 Stat. 1192; June 7, 1924, c. 355, § 2, 43 Stat. 659.

§ 24. Director and assistant directors of locomotive inspection; appointment and salaries

There shall be appointed by the President, by and with the advice and consent of the Senate, a director of locomotive inspection and two assistant directors of locomotive inspection, who shall have general superintendence of the inspectors hereinafter provided for, direct them in the duties imposed upon them, and see that the requirements of sections 22-34 of this title as to the inspection of locomotives, their boilers, tenders, and so forth, and the rules, regulations, and instructions made or given hereunder are observed by common carriers subject hereto. The said director of locomotive inspection and his two assistants shall be selected with reference to their practical knowledge of the construction and repairing of boilers, and to their fitness and ability to systematize and carry into effect the provisions hereof relating to the inspection and maintenance of locomotive boilers. The Interstate Commerce Commission shall have authority, in accordance with the Classification Act of 1949, to fix the compensation of the director of locomotive inspection, the assistant directors, and the district inspectors; and each of such persons shall be paid his traveling expenses incurred in performance of his duties. Feb. 17, 1911, c. 103, § 3, 36 Stat. 914; June 26, 1918, c. 105, § 1, 40 Stat. 616; June 7, 1924, c. 355, § 6, 43 Stat. 659; June 27, 1930, c. 644, § 1, 46 Stat. 822; Apr. 22, 1940, c. 124, § 1, 54 Stat. 148; May 27, 1947, c. 85, § 1, 61 Stat. 120; Oct. 28, 1949, c. 782, Title XI, § 1106(a) 63 Stat. 972.

§ 25. Offices; legal, technical, stenographic, and clerical help

The office of the director of locomotive inspection shall be in Washington, District of Columbia, and the Interstate Commerce Commis-

sion shall provide such legal, technical, stenographic, and clerical help as the business of the offices of the director of locomotive inspection, his said assistants, and the district inspectors may require. Feb. 17, 1911, c. 103, § 3, 36 Stat. 914; Apr. 22, 1940, c. 124, § 1, 54 Stat. 148; May 27, 1947, c. 85, § 1, 61 Stat. 120.

§ 26. Inspection districts; appointment and assignment of district inspectors; salaries and expenses; examinations of applicants; disqualifications

Immediately after his appointment and qualification the director of locomotive inspection shall divide the territory comprising the several States and the District of Columbia into fifty locomotive boiler inspection districts, so arranged that the service of the inspector appointed for each district shall be most effective, and so that the work required of each inspector shall be substantially the same. Thereupon there shall be appointed by the Interstate Commerce Commission fifty inspectors of locomotive boilers. Said inspectors shall be in the classified service and shall be appointed after competitive examination according to the law and the rules of the Civil Service Commission governing the classified service. The director of locomotive inspection shall assign one inspector so appointed to each of the districts hereinbefore named. In order to obtain the most competent inspectors possible, it shall be the duty of the director of locomotive inspection to prepare a list of questions to be propounded to applicants with respect to construction, repair, operation, testing, and inspection of locomotive boilers, and their practical experience in such work, which list, being approved by the Interstate Commerce Commission shall be used by the Civil Service Commission as a part of its examination. No person interested, either directly or indirectly, in any patented article required to be used on any locomotive under supervision or who is intemperate in his habits shall be eligible to hold the office of either director of locomotive inspection or assistant or district inspector. Feb. 17, 1911, c. 103, § 4, 36 Stat. 914; June 26, 1918, c. 105, § 1, 40 Stat. 616; June 27, 1930, c. 644, § 2, 46 Stat. 823; Apr. 22, 1940, c. 124, § 1, 54 Stat. 148; May 27, 1947, c. 85, § 2, 61 Stat. 120.

§ 27. Appointment and assignment of additional inspectors

Within the appropriations therefor and subject to the provisions of section 26 of this title, the Interstate Commerce Commission may appoint, from time to time, not more than fifteen inspectors in addition to the number authorized in such section, as the needs of the service may require. Any inspector appointed under this provision shall be so assigned by the director of locomotive inspection that his service will be most effective. Feb. 17, 1911, c. 103, § 4 (par.), as added June 7, 1924, c. 355, § 4, 43 Stat. 659, and amended Apr. 22, 1940 c. 124, § 1, 54 Stat. 148.

§ 28. Rules and instructions as to inspection

Each carrier subject to this chapter shall file its rules and instructions for the inspection of locomotive boilers with the chief inspector within three months after February 17, 1911, and after hearing and approval by the Interstate Commerce Commission, such rules and instructions, with such modifications as the commission requires, shall

become obligatory upon such carrier: *Provided, however,* That if any carrier subject to this chapter shall fail to file its rules and instructions the director of locomotive inspection shall prepare rules and instructions not inconsistent herewith for the inspection of locomotive boilers, to be observed by such carrier; which rules and instructions, being approved by the Interstate Commerce Commission, and a copy thereof being served upon the president, general manager, or general superintendent of such carrier, shall be obligatory, and a violation thereof punished as hereinafter provided: *Provided also,* that such common carrier may from time to time change the rules and regulations herein provided for, but such change shall not take effect and the new rules and regulations be in force until the same shall have been filed with and approved by the Interstate Commerce Commission. The director of locomotive inspection shall also make all needful rules, regulations, and instructions not inconsistent herewith for the conduct of his office and for the government of the district inspectors: *Provided, however,* That all such rules and instructions shall be approved by the Interstate Commerce Commission before they take effect. Feb. 17, 1911, c. 103, § 5, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148.

§ 29. Duties of district inspectors; inspection and repairs by carriers; notice to carrier of condition of boiler; appeal to director and reexamination; further appeal to commission

It shall be the duty of each inspector to become familiar, so far as practicable, with the condition of each locomotive boiler ordinarily housed or repaired in his district, and if any locomotive is ordinarily housed or repaired in two or more districts, then the director of locomotive inspection or an assistant shall make such division between inspectors as will avoid the necessity for duplication of work. Each inspector shall make such personal inspection of the locomotive boilers under his care from time to time as may be necessary to fully carry out the provisions of sections 22-29 and 31-34 of this title, and as may be consistent with his other duties, but he shall not be required to make such inspections at stated times or at regular intervals. His first duty shall be to see that the carriers make inspections in accordance with the rules and regulations established or approved by the Interstate Commerce Commission, and that carriers repair the defects which such inspections disclose before the boiler or boilers or appurtenances pertaining thereto are again put in service. To this end each carrier subject to said sections shall file with the inspector in charge, under the oath of the proper officer or employee, a duplicate of the report of each inspection required by such rules and regulations, and shall also file with such inspector, under the oath of the proper officer or employee, a report showing the repair of the defects disclosed by the inspection. The rules and regulations hereinbefore provided for shall prescribe the time at which such reports shall be made. Whenever any district inspector shall, in the performance of his duty, find any locomotive boiler or apparatus pertaining thereto not conforming to the requirements of the law or the rules and regulations established and approved as hereinbefore stated, he shall notify the carrier in writing that the locomotive is not in serviceable condition, and

thereafter such boiler shall not be used until in serviceable condition: *Provided*, That a carrier, when notified by an inspector in writing that a locomotive boiler is not in serviceable condition, because of defects set out and described in said notice, may within five days after receiving said notice, appeal to the director of locomotive inspection by telegraph or by letter to have said boiler reexamined, and upon receipt of the appeal from the inspector's decision, the director of locomotive inspection shall assign one of the assistant directors of locomotive inspection or any district inspector other than the one from whose decision the appeal is taken to reexamine and inspect said boiler within fifteen days from date of notice. If upon such reexamination the boiler is found in serviceable condition, the director of locomotive inspection shall immediately notify the carrier in writing, whereupon such boiler may be put into service without further delay; but if the reexamination of said boiler sustains the decision of the district inspector, the director of locomotive inspection shall at once notify the carrier owning or operating such locomotive that the appeal from the decision of the inspector is dismissed, and upon the receipt of such notice the carrier may, within thirty days, appeal to the Interstate Commerce Commission, and upon such appeal, and after hearing, said commission shall have power to revise, modify, or set aside such action of the director of locomotive inspection and declare that said locomotive is in serviceable condition and authorize the same to be operated: *Provided further*, That pending either appeal the requirements of the inspector shall be effective. Feb. 17, 1911, c. 103, § 6, 36 Stat. 915; Apr. 22, 1940, c. 124, § 1, 54 Stat. 148.

§ 30. Powers and duties of inspectors, and provisions of certain sections applicable to all parts of locomotive and tender; examinations of inspectors

The director of locomotive inspection and the two assistant directors of locomotive inspection, together with all the district inspectors, appointed as hereinbefore provided, shall inspect and shall have the same powers and duties with respect to all the parts and appurtenances of the locomotive and tender that they have with respect to the boiler of a locomotive and the appurtenances thereof, and the provision of sections 22-29 and 31-34 of this title as to the equipment of locomotives shall apply to and include the entire locomotive and tender and all their parts with the same force and effect as it applies to locomotive boilers and their appurtenances. All inspectors and applicants for the position of inspector shall be examined touching their qualifications and fitness with respect to the additional duties imposed. Mar. 4, 1915, c. 169, § 2, 38 Stat. 1192; Apr. 22, 1940, c. 124, § 2, 54 Stat. 148.

§ 31. Annual report of director

The director of locomotive inspection shall make an annual report to the Interstate Commerce Commission of the work done during the year, and shall make such recommendations for the betterment of the service as he may desire. Feb. 17, 1911, c. 103, § 7, 36 Stat. 916; Apr. 22, 1940, c. 124, § 1, 54 Stat. 148.

§ 32. Report by carrier to director as to accident; preservation of disabled parts; investigation and report thereupon

In the case of accident resulting from failure from any cause of a locomotive boiler or its appurtenances, resulting in serious injury or death to one or more persons, a statement forthwith must be made in writing of the fact of such accident, by the carrier owning or operating said locomotive, to the director of locomotive inspection. Whereupon the facts concerning such accident shall be investigated by the director of locomotive inspection or one of his assistants, or such inspector as the director of locomotive inspection may designate for that purpose. And where the locomotive is disabled to the extent that it cannot be run by its own steam, the part or parts affected by the said accident shall be preserved by said carrier intact, so far as possible, without hindrance or interference to traffic until after said inspection. The director of locomotive inspection or an assistant or the designated inspector making the investigation shall examine or cause to be examined thoroughly the boiler or part affected, making full and detailed report of the cause of the accident to the director of locomotive inspection. Feb. 17, 1911, c. 103, § 8, 36 Stat. 916; Apr. 22, 1940, c. 124, § 1, 54 Stat. 148.

§ 33. Reports by commission of investigations

The Interstate Commerce Commission may at any time call upon the director of locomotive inspection for a report of any accident embraced in section 32 of this title, and upon the receipt of said report, if it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as it deems proper. Such reports shall be made public in such manner as the commission deems proper. Neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation. Feb. 17, 1911, c. 103, § 8, 36 Stat. 916; Apr. 22, 1940, c. 124 § 1, 54 Stat. 148.

§ 34. Penalty for violations by carrier; duty of United States attorney to sue therefor; director to give information

Any common carrier violating the provisions of sections 22-34 of this title relating to locomotives, their boilers, tenders, and so forth, or any rule or regulation made under such provisions or any lawful order of any inspector shall be liable to a penalty of not less than \$250 and not more than \$2,500 for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such attorneys, subject to the direction of the Attorney General, to bring such suits upon duly verified information being lodged with them, respectively, of such violations having occurred; and it shall be the duty of the director of locomotive inspection to give information to the proper United States attorney of all violations coming to his knowledge. As amended Aug. 14, 1957, Pub.L. 85-135, § 3, 71 Stat. 352.

* * * * *

BLOCK-SIGNAL SYSTEMS

§ 35. Investigation and report by commission on block-signal systems and appliances for automatic control of trains; evidence

The Interstate Commerce Commission is directed to investigate and report on the use of and necessity for block-signal systems and appliances for the automatic control of railway trains in the United States. For this purpose the commission is authorized to employ persons who are familiar with the subject, and may use such of its own employees as are necessary to make a thorough examination into the matter.

In transmitting its report to the Congress the commission shall recommend such legislation as to the commission seems advisable.

To carry out and give effect to the provisions of this section the commission shall have power to issue subpoenas, administer oaths, examine witnesses, require the production of books and papers, and receive depositions taken before any proper officer in any State or Territory of the United States. June 30, 1906, No. 46, 34 Stat. 838.

INSPECTION AND TESTING OF RAILROAD CARS AND APPLIANCES

§ 36. Investigation and testing by commission of appliances or systems to promote safety

The Interstate Commerce Commission is authorized, at its discretion, to investigate, test experimentally, and report on the use and need of any appliances or systems intended to promote the safety of railway operation which may be furnished in completed shape to such commission for such investigation and test entirely free of cost to the Government. For this purpose the commission is authorized to employ persons familiar with the subject to be investigated and tested, and may also make use of its regular employees for such purposes. May 27, 1908, c. 200, § 1, 35 Stat. 325.

§ 37. Inspection of mail cars

Hereafter all inspectors employed for the enforcement of the provisions of sections 1-7 of this title, as to safety appliances shall also be required to make examination of the construction, adaptability, design, and condition of all mail cars used on any railroad in the United States and make report thereon, a copy of which report shall be transmitted to the Postmaster General. May 27, 1908, c. 200, § 1, 35 Stat. 324; Mar. 4, 1909, c. 299, § 1, 35 Stat. 965.

ACCIDENT REPORTS ACT

§ 38. Monthly reports of railroad accidents; duty of carrier to make

It shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Secretary of Transportation, at his office in Washington, District of Columbia, a monthly report, under oath, of all collisions, derailments, or other accidents resulting in death

or injury to any person or damage to equipment or roadbed, arising from the operation of such railroad, which report shall state the nature and causes thereof and the circumstances connected therewith: *Provided*, That hereafter all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Interstate Commerce Commission. As amended Sept. 13, 1960, Pub.L. 86-762, § 1, 74 Stat. 903.

§ 39. Penalty for failure to make report

Any common carrier failing to make the report provided for in section 38 of this title within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than \$100 for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same. May 6, 1910, c. 208, § 2, 36 Stat. 351.

§ 40. Investigation by commission of accidents; cooperation with State commissions; reports of investigations

The Interstate Commerce Commission shall have authority to investigate all collisions, derailments, or other accidents resulting in serious injury to person or to the property of a railroad occurring on the line of any common carrier engaged in interstate or foreign commerce by railroad. The commission, or any impartial investigator thereunto authorized by said commission, shall have authority to investigate such collisions, derailments, or other accidents aforesaid, and all the attending facts, conditions, and circumstances, and for that purpose may subpoena witnesses, administer oaths, take testimony, and require the production of books, papers, orders, memoranda, exhibits, and other evidence, and shall be provided by said carriers with all reasonable facilities: *Provided*, That when such accident is investigated by a commission of the State in which it occurred, the Interstate Commerce Commission shall, if convenient, make any investigation it may have previously determined upon, at the same time as, and in connection with, the State commission investigation. Said commission shall, when it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as it deems proper. Such reports shall be made public in such manner as the commission deems proper. May 6, 1910, c. 208, § 3, 36 Stat. 351.

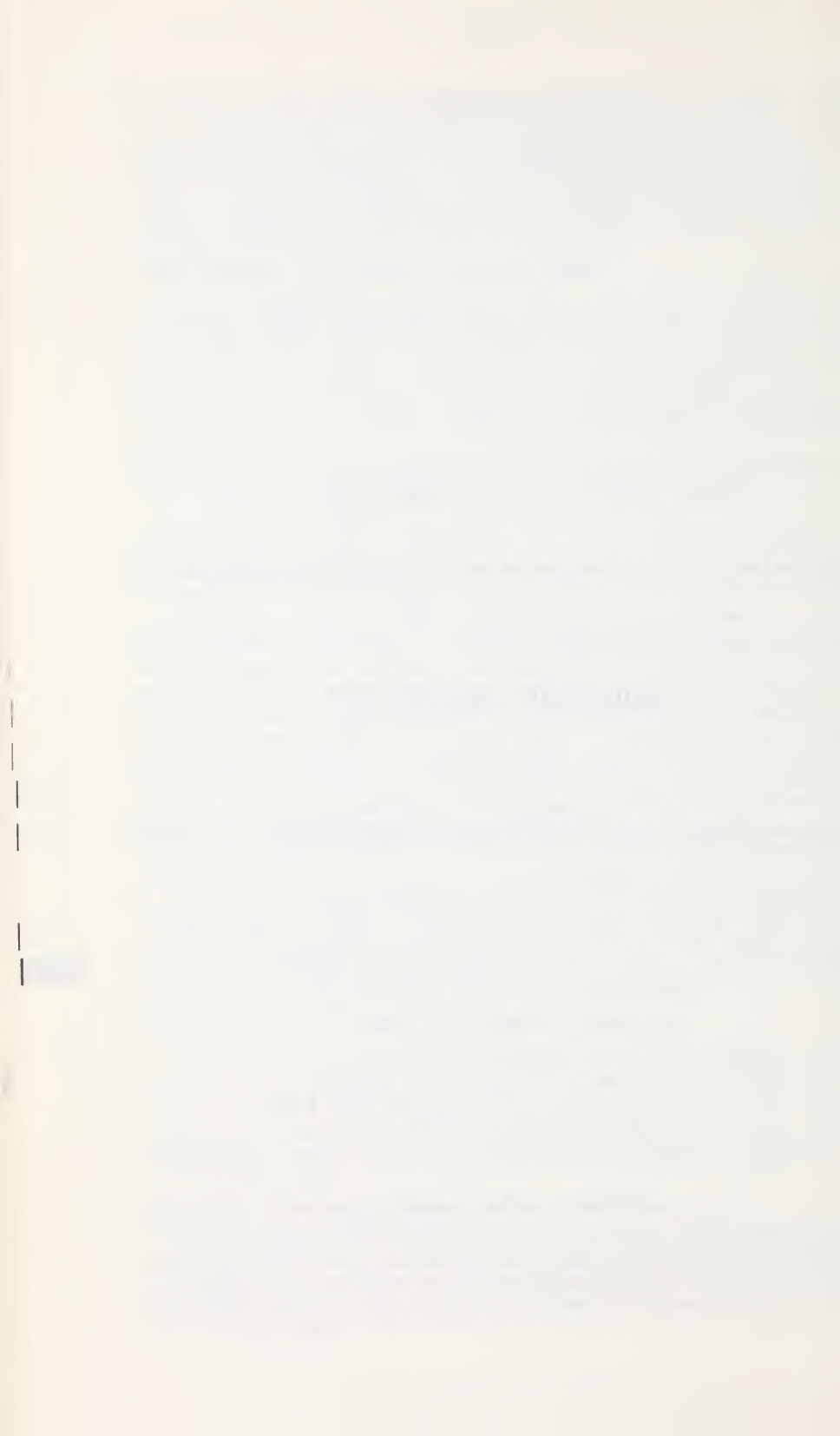
§ 41. Reports not evidence in suits for damages

Neither the report required by section 38 of this title nor any report of the investigation provided for in section 40 of this title nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation. May 6, 1910, c. 208, § 4, 36 Stat. 351.

§ 42. Rules and regulations; form of reports

The Secretary of Transportation is authorized to prescribe such rules and regulations and such forms for making the reports hereinbefore provided as are necessary to implement and effectuate the purposes of sections 38-43 of this title. As amended Sept. 13, 1960, Pub.L. 86-762, § 2, 74 Stat. 904.

HOURS OF SERVICE ACT



HOURS OF SERVICE ACT

AN ACT To promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in the District of Columbia or any territory of the United States, or from one State or territory of the United States or the District of Columbia to any other State or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

(b) For the purposes of this Act—

(1) The term "railroad" includes all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease.

(2) The term "employee" means an individual actually engaged in or connected with the movement of any train, including hostlers.

(3) Time on duty shall commence when an employee reports for duty and terminate when the employee is finally released from duty, and shall include:

(A) Interim periods available for rest at other than a designated terminal;

(B) Interim periods available for less than four hours rest at a designated terminal;

(C) Time spent in deadhead transportation by an employee to a duty assignment: *Provided*, That time spent in deadhead transportation by an employee from duty to his point of final release shall not be counted in computing time off duty;

(D) The time an employee is actually engaged in or connected with the movement of any train; and

(E) Such period of time as is otherwise provided by this Act.

SEC. 2. (a) It shall be unlawful for any common carrier, its officers or agents, subject to this Act—

(1) to require or permit an employee, in case such employee shall have been continuously on duty for fourteen hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty, except that, effective upon the expiration of the two-year period beginning on the effective date of this paragraph, such fourteen-hour duty period shall be reduced to twelve hours;

(2) to require or permit an employee to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours;

(3) to provide sleeping quarters for employees (including crew quarters, camp or bunk cars, and trailers) which do not afford such employees an opportunity for rest, free from interruptions caused by noise under the control of the railroad, in clean, safe, and sanitary quarters; or

(4) to begin construction or reconstruction of any sleeping quarters referred to in paragraph (3), on or after the date of enactment of this paragraph, within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area where railroad switching or humping operations are performed.

(b) In determining, for the purposes of subsection (a), the number of hours an employee is on duty, there shall be counted, in addition to the time such employee is actually engaged in or connected with the movement of any train, all time on duty in other service performed for the common carrier during the twenty-four-hour period involved.

(c) Notwithstanding subsection (a) of this section, the crew of a wreck or relief train may be permitted to be or remain on duty for not to exceed 4 additional hours in any period of 24 consecutive hours whenever an actual emergency exists and work of the crew is related to such emergency. For purposes of this subsection, an emergency ceases to exist when the track is cleared and the line is open for traffic.

(d) The provisions of this section shall not apply to an employee during such period of time as the provisions of section 3 apply to his duty and off-duty periods.

SEC. 3. (a) No operator, train dispatcher, or other employee who by the use of the telegraph, telephone, radio, or any other electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements—

(1) shall be required or permitted to be or remain on duty for more than nine hours, whether consecutive or in the aggregate, in any twenty-four-hour period in any tower, office, station, or place where two or more shifts are employed; and

(2) shall be required or permitted to be or remain on duty for more than twelve hours, whether consecutive or in the aggregate, in any twenty-four-hour period in any tower, office, station, or place where only one shift is employed.

(b) For the purposes of subsection (a), in determining the number of hours an employee is on duty in a class of service, and at a place, described in paragraph (1) or (2) of such subsection, there shall be counted, in addition to the time spent by him on duty in such service at such place, all time on duty in other service performed for the common carrier during the twenty-four-hour period involved.

(c) Notwithstanding subsection (a) of this section, in case of emergency the employees named in such subsection may be permitted to be and remain on duty for four additional hours in any period of twenty-four consecutive hours of not exceeding three days in any period of seven consecutive days.

SEC. 3A. (a) It shall be unlawful for any common carrier, its officers or agents, subject to this Act—

(1) to require or permit an individual employed by the carrier who is engaged in installing, repairing or maintaining signal

systems, in case such individual shall have been continuously on duty for twelve hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty; or

(2) to require or permit an individual described in paragraph (1) to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours.

(b) In determining for the purposes of subsection (a) the number of hours an individual is on duty, there shall be counted, in addition to the time such individual is actually engaged in installing, repairing or maintaining signal systems, all time on duty in other service performed for the common carrier during the twenty-four hour period involved.

(c) For purposes of this section, time on duty shall commence when an individual reports for duty and terminate when the individual is finally released from duty.

(d) As used in sections 2(a)(3), 4, and 5 of this Act, the term "employee" shall be deemed to include an individual employed by the carrier who is engaged in installing, repairing or maintaining signal systems.

(e) The provisions of this section shall not apply to an individual during such period of time as the provisions of section 3 apply to his duty and off-duty periods.

(f) Notwithstanding subsection (a) of this section, an individual engaged in installing, repairing, or maintaining signal systems may be permitted to be or remain on duty for not to exceed four additional hours in any period of twenty-four consecutive hours whenever an actual emergency exists and work of the individual is related to such emergency. For purposes of this subsection with respect to the on-duty time of an individual engaged in installing, repairing, or maintaining signal systems, an emergency ceases to exist when the signal systems are restored to service.

SEC. 4. The requirements imposed by this Act with respect to time on duty of employees are hereby declared to result in the maximum permissible hours of service consistent with safety. However, shorter hours of service and time on duty of employees for lesser periods of time are hereby declared to be proper subjects for collective bargaining between any common carrier subject to this Act and its employees.

SEC. 5. (a) Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of section 2, section 3 or section 3A of this Act shall be liable to a penalty of \$500 for each and every violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed; and it shall be the duty of such United States attorney to bring such suit upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of two years from the date of such violation.

(b) It shall be the duty of the Secretary of Transportation to lodge with the appropriate United States attorney information of any violation as may come to the knowledge of the Secretary.

(c) In all prosecutions under this Act the common carrier shall be deemed to have knowledge of all acts of all its officers and agents.

(d) The provisions of this Act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of the employee at the time said employee left a terminal, and which could not have been foreseen.

(e) With respect to any railroad which employs a total of not more than 15 employees covered by this Act, the Secretary of Transportation may after full hearing in any particular case and for good cause shown exempt any such railroad subject to this Act with respect to one or more of its employees from the limitations imposed by this Act for a specified period of time, if the Secretary of Transportation finds that such exemption is in the public interest and will not adversely affect safety. Such order is to be subject to review at least annually. In no event shall any such exemption be made for any railroad described in this section to work its employees beyond 16 hours either consecutively or in the aggregate within any 24-hour period.

SEC. 6. It shall be the duty of the Secretary of Transportation to carry out the provisions of this Act.

HAZARDOUS MATERIALS TRANSPORTATION ACT

HAZARDOUS MATERIALS TRANSPORTATION ACT



Public Law 93-633
93rd Congress, H. R. 15223
January 3, 1975

An Act

88 STAT. 2156

To regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Safety Act of 1974".

Transportation
Safety Act of
1974.

TITLE I—HAZARDOUS MATERIALS

49 USC 1801
note.

SHORT TITLE

Hazardous
Materials
Transportation
Act.

SEC. 101. This title may be cited as the "Hazardous Materials Transportation Act".

49 USC 1801
note.

DECLARATION OF POLICY

SEC. 102. It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

49 USC 1801.

DEFINITIONS

SEC. 103. As used in this title, the term—

49 USC 1802.

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "Secretary" means the Secretary of Transportation, or his delegate;

(4) "serious harm" means death, serious illness, or severe personal injury;

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

(6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

(7) "United States" means all of the States.

DESIGNATION OF HAZARDOUS MATERIALS

SEC. 104. Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.

49 USC 1803.

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

49 USC 1804.

SEC. 105. (a) GENERAL.—The Secretary may issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) REPRESENTATION.—No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act.

HANDLING OF HAZARDOUS MATERIALS

49 USC 1805.

SEC. 106. (a) CRITERIA.—The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) REGISTRATION.—Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section.

January 3, 1975

- 3 -

Pub. Law 93-633

88 STAT. 2158

The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) **REQUIREMENT.**—No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of hazardous materials, unless he has on file a registration statement.

EXEMPTIONS

SEC. 107. (a) GENERAL.—The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this title in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

49 USC 1806.

Publication
in Federal
Register.

(b) **VESSELS.**—The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this title, any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section (46 U.S.C. 391a(2)), or any other vessel regulated under such Act, to the extent of such regulation.

Exclusion.

(c) **FIREARMS AND AMMUNITION.**—Nothing in this title, or in any regulation issued under this title, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) **LIMITATION ON AUTHORITY.**—Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this title may be exempted from or relieved of the obligation to meet any requirements imposed under this title.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING
AIRCRAFT

Regulations.
49 USC 1807.

SEC. 108. (a) GENERAL.—Within 120 days after the date of enactment of this section, the Secretary shall issue regulations, in accordance with this section and pursuant to section 105 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 101(4) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(4)). Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) DEFINITION.—As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.

POWERS AND DUTIES OF THE SECRETARY

49 USC 1808.

Notice,
hearing
opportunity.
Jurisdiction.

SEC. 109. (a) GENERAL.—The Secretary is authorized, to the extent necessary to carry out his responsibilities under this title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) RECORDS.—Each person subject to requirements under this title shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) INSPECTION.—The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) FACILITIES AND DUTIES.—The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

January 3, 1975

- 5 -

Pub. Law 93-633

88 STAT. 2160

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) **ANNUAL REPORT.**—The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation of hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to—

Report to
President,
transmittal
to Congress.
Contents.

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;

(5) a summary of outstanding problems confronting the administration of this title, in order of priority; and

(6) such recommendations for additional legislation as are deemed necessary or appropriate.

PENALTIES

Sec. 110. (a) **CIVIL.**—(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than \$10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

49 USC 1809.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) **CRIMINAL.**—A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

SPECIFIC RELIEF

49 USC 1810.

SEC. 111. (a) GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

"Imminent hazard."

(b) **IMMINENT HAZARD.**—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an "imminent hazard" exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

RELATIONSHIP TO OTHER LAWS

49 USC 1811.

SEC. 112. (a) GENERAL.—Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

(b) **STATE LAWS.**—Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

18 USC 831.

(c) **OTHER FEDERAL LAWS.**—The provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) or to pipelines which are subject to regulation under chapter 39 of title 18, United States Code.

CONFORMING AMENDMENTS

SEC. 113. (a) Section 4472 of title 52 of the Revised Statutes of the United States, as amended (46 U.S.C. 170) is amended—

January 3, 1975

- 7 -

Pub. Law 93-633

88 STAT. 2162

(1) by inserting, in the first sentence of paragraph (14) thereof, "criminal" before the word "penalty" and "or imprisoned not more than 5 years, or both" before the phrase "for each violation"; and

(2) by adding at the end thereof the following new paragraph:

"(17) (A) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of any provision of this section, or of any regulation issued under this section, shall be liable to the United States for a civil penalty of not more than \$10,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

Penalty.

"(B) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States, in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts."

(b) Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(1)) is amended—

(1) by inserting immediately before the period at the end of the first sentence thereof and inserting in lieu thereof: "except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials."; and

(2) by deleting in the second sentence thereof: "Provided, That this" and inserting in lieu thereof the following: "The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This".

(c) Section 902(h) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(h)) is amended to read as follows:

"HAZARDOUS MATERIALS

"(h)(1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

Ante, p. 2157.

"(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other

Penalty.

property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

"(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor."

(d) Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) is amended by inserting in the first sentence thereof after "aviation safety" and before "as set forth in" the following: (other than those relating to the transportation, packaging, marking, or description of hazardous materials)".

(e)(1) Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) is amended by striking out the period at the end thereof and by inserting in lieu thereof "(other than subsection (e)(4))."

(2) Section 6(f)(3)(B) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(B)) is amended by striking out the period at the end thereof and by inserting in lieu thereof "(other than subsection (e)(4))."

(f) Subsection (6) of section 4472 of the Revised Statutes, as amended (46 U.S.C. 170(6)), is amended—

(1) in paragraph (a) thereof, by striking out "inflammable" each place it appears and inserting in lieu thereof at each such place "flammable"; by inserting before "liquids" the following: "or combustible"; and by deleting the colon and the proviso in its entirety and by inserting in lieu thereof a period and the following two new sentences: "The provisions of this subsection shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any flammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed, and revised as necessary, by the Secretary of Transportation."

(2) in paragraph (b) thereof, by striking out in clause (iv) thereof "inflammable liquids" and inserting in lieu thereof "flammable or combustible liquids".

Repeal.

(g) The Hazardous Materials Transportation Control Act of 1970 (Pub. L. 91-458, title III; 49 U.S.C. 1761-1762) is repealed.

EFFECTIVE DATE

49 USC 1801
note.

SEC. 114. (a) Except as provided in this section, the provisions of this title shall take effect on the date of enactment.

(b)(1) Except as provided in section 108 of this title or paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this title, pursuant to any provision of law amended or repealed by this title, shall continue in effect according to its terms or until repealed, terminated, withdrawn, amended, or modified by the Secretary of a court of competent jurisdiction.

January 3, 1975

- 9 -

Pub. Law 93-633

88 STAT. 2164

(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this title as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this title, or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this title, unless there is full compliance with the purposes and provisions of this Act and regulations thereunder.

(c) Proceedings pending upon the date of enactment of this title shall not be affected by the provisions of this title and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 115. There are authorized to be appropriated to carry out the provisions of this title not to exceed \$7,000,000 for the fiscal year ending June 30, 1976, not to exceed \$1,750,000 for the transition period of July 1, 1976, through September 30, 1976, and not to exceed \$5,000,000 per fiscal year for the fiscal years ending September 30, 1977, and September 30, 1978.

* * * * *

INDEPENDENT SAFETY BOARD ACT OF 1974

INDEPENDENT SAFETY BOARD ACT OF 1974



Public Law 93-633
93rd Congress, H. R. 15223
January 3, 1975

An Act

88 STAT. 2156

To regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Safety Act of 1974".

Transportation
Safety Act of
1974.
49 USC 1801
note.

* * * * *

TITLE III—INDEPENDENT SAFETY BOARD

Independent
Safety Board
Act of 1974.

SHORT TITLE

SEC. 301. This title may be cited as the "Independent Safety Board Act of 1974".

49 USC 1901
note.

FINDINGS

SEC. 302. The Congress finds and declares:

49 USC 1901.

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

49 USC 1654.

(2) Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands

continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

NATIONAL TRANSPORTATION SAFETY BOARD

49 USC 1902.

SEC. 303. (a) ESTABLISHMENT.—The National Transportation Safety Board (hereafter in this title referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975.

Membership.

(b) ORGANIZATION.—(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. At any given time, no less than two members of the Board shall be individuals who have been appointed in the field of accident reconstruction, safety engineering, or transportation safety.

Term.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Individuals serving as members of the National Transportation Safety Board on the date of enactment of this title shall continue to serve as members of the Board until the expiration of their then current term of office. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1976 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this title referred to as the "Chairman"); and

(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or Acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

January 3, 1975

- 13 -

Pub. Law 93-633

88 STAT. 2168

(A) aviation; (B) highway and motor vehicle; (C) railroad and tracked vehicle; and (D) pipeline. The Board shall, in addition, establish and maintain any other such office as is needed, including an office to investigate and report on the safe transportation of hazardous materials.

(c) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this title.

GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall—

49 USC 1903.

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 6(d) of the Department of Transportation Act (49 U.S.C. 4655(d)) pursuant to title VII of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1411);

49 USC 1655.

(B) highway accident, including any railroad grade crossing accident, that it selects in cooperation with the States;

(C) railroad accident in which there is a fatality, substantial property damage, or which involves a passenger train;

(D) pipeline accident in which there is a fatality or substantial property damage;

(E) major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the department in which the Coast Guard is operating: *Provided*, That any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating; and

(F) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this title.

The Board may request the Secretary of Transportation (hereafter in this title referred to as the "Secretary") to make investigations with regard to such accidents and to report to the

Report.

Report;
publication
in Federal
Register.

Reports to
Congress,
Federal,
State, and
local agencies.

Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and to cause notice of the issuance and availability of such reports to be published in the Federal Register;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation including human injury avoidance;

(5) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(6) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(7) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies;

(8) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1422, 1429, or 1431(c)); and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239); the Act of July 15, 1954 (46 U.S.C. 239 (a) and (b)); or section 4 of the Great Lakes Pilotage Act (46 U.S.C. 216(b)).

(b) **POWERS OF BOARD.**—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may

46 USC 239a,
239b.

46 USC 216b.

January 3, 1975

- 15 -

Pub. Law 93-633

88 STAT. 2170

be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

Inspections.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this title, with any government entity or any person.

Contract authority.

(5) The Board is authorized to obtain, and shall be furnished, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: *Provided*, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

Autopsy report.

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); and (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions.

(7) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States

Budget estimates, transmittal to Congress.

shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(8) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(9) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

(10) Establish such rules and regulations as may be necessary to the exercise of its functions.

(c) **USE OF REPORTS AS EVIDENCE.**—No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) **JUDICIAL REVIEW.**—Any order, affirmative or negative, issued by the Board under this title shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code.

ANNUAL REPORT

SEC. 305. The Board shall report to the Congress on July 1 of each year. Such report shall include, but need not be limited to—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the preceding calendar year;

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(3) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State law with responsibility in this field; and

(4) a biennial appraisal and evaluation and review, and recommendations for legislative and administrative action and change, with respect to transportation safety.

Publication
in Federal
Register.

Rules and
regulations.
Prohibition.

5 USC 701.

49 USC 1904.

January 3, 1975

- 17 -

Pub. Law 93-633

88 STAT. 2172

PUBLIC ACCESS TO INFORMATION

SEC. 306. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to subsection (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public. 49 USC 1905.

(b) EXCEPTION.—The Board shall not disclose information obtained under this title which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner designed to preserve confidentiality— Information disclosure, prohibition.

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 307. Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to— 49 USC 1906.

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost. Publication in Federal Register.

CONFORMING AMENDMENTS

Sec. 308. The Department of Transportation Act is amended—

(1) by deleting section 5 (49 U.S.C. 1654);

(2) by amending section 4(c) thereof (49 U.S.C. 1653(c)) by deleting "or the National Transportation Safety Board" in the first sentence thereof; and by deleting in the second sentence thereof ", the Administrators, or the National Transportation Safety Board." and by inserting in lieu thereof "or the Administrators."; and

(3) by amending section 4(d) thereof (49 U.S.C. 1653(d)) by deleting ", the Administrators, and the National Transportation Safety Board" and by inserting in lieu thereof "and the Administrators".

AUTHORIZATION OF APPROPRIATIONS

49 USC 1907.

Sec. 309. There are authorized to be appropriated for the purposes of this Act not to exceed \$12,000,000 for the fiscal year ending June 30, 1975; and \$12,000,000 for the fiscal year ending June 30, 1976, such sums to remain available until expended. There are authorized to be appropriated for the purpose of this Act not to exceed \$3,800,000 for the transition quarter ending September 30, 1976, \$15,200,000 for the fiscal year ending September 30, 1977, and \$16,400,000 for the fiscal year ending September 30, 1978, such sums to remain available until expended.

Approved January 3, 1975.





**Regional Rail Reorganization Act of
1973**

**Railroad Revitalization and Regula-
tory Reform Act of 1976**

Part I of the Interstate Commerce Act

Rail Passenger Service Act

Federal Railroad Safety Act of 1970

Railway Labor Act

Railroad Retirement Act

Railroad Unemployment Insurance Act

Related Materials:

Excerpts from the U.S. Code:

Safety Appliance Acts

Ash Pan Act

Locomotive Inspection Act

Block signal systems

**Inspection and testing of
railroad cars and ap-
pliances**

Accident Reports Act

Hours of Service Act

**Hazardous Materials Transporta-
tion Act**

**Independent Safety Board Act of
1974**

To use this index, bend the pub-
lication over and locate the desired
section by following the black
markers.